

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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MELISSA KAYE,

Plaintiff,

-against-

18 CV 12137

HEALTH AND HOSPITALS CORPORATION, et al.,

Defendants.

- - - - -X

October 6, 2021

10:16 a.m.

VIRTUAL DEPOSITION of BARRY WINKLER, M.D., a witness
herein, taken pursuant to Court Order, and held via
videoconference, before Marci Loren Dustin, a Court
Reporter and Notary Public of the State of New York.

1 A P P E A R A N C E S :

2
3 THE LAW OFFICES OF SPECIAL HAGAN
4 Attorneys for Plaintiff
5 196-04 Hollis Avenue
6 Saint Albans, New York 11412
7 BY: SPECIAL HAGAN, ESQ.

8 NEW YORK CITY LAW DEPARTMENT
9 Attorney for Defendants
10 100 Church Street
11 New York, New York 10007
12 BY: DONNA CANFIELD, ESQ.

13 ALSO PRESENT:
14 Melissa Kaye
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BARRY WINKLER, M.D.

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1 IT IS HEREBY STIPULATED AND AGREED
2 by and between the attorneys for the respective parties
3 herein, that filing and sealing be and the same are
4 hereby waived.

5
6 IT IS FURTHER STIPULATED AND AGREED
7 that all objections, except as to the form of the
8 question, shall be reserved to the time of the trial.

9
10 IT IS FURTHER STIPULATED AND AGREED
11 that the within deposition may be signed and sworn to
12 before any officer authorized to administer an oath,
13 with the same force and effect as if signed and sworn
14 to before the Court.

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BARRY WINKLER, M.D.

1 THE REPORTER: My name is Marci Loren Dustin,
2 your remote court reporter. The parties are
3 present via videoconference to take the deposition
4 of Barry Winkler, M.D., in the matter of Melissa
5 Kaye against Health And Hospitals Corporation, et
6 al. Today's date is October 6, 2021, and the time
7 is 10:16 a.m. It is important that everyone speak
8 one at a time, as delays do occur in transmission.
9 Please note that pursuant to CPLR 3113(d), the
10 oath can be administered remotely by me. Counsel,
11 please state your name and who you represent and
12 whether you stipulate to that authority; and the
13 defending attorney, please agree that the witness
14 is who they say they are.

15 MS. HAGAN: Special Hagan for Dr. Melissa
16 Kaye. I stipulate.

17 MS. CANFIELD: Donna Canfield from the New
18 York City Law Department on behalf of all the
19 defendants in this action. I can stipulate that
20 Dr. Barry Winkler is Dr. Barry Winkler.

21 BARRY WINKLER, M.D.,
22 having first been duly sworn by the Notary Public
23 (Marci Loren Dustin), was examined and testified as
24 follows:

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5

1 EXAMINATION BY

2 MS. HAGAN:

3 Q. Good morning, Dr. Winkler.

4 A. God morning.

5 Q. Dr. Winkler, I'm just going to go over some
6 housekeeping issues, just to, I guess, make sure that
7 everything is clear. Dr. Winkler, the reporter just
8 administered an oath, so you understand that you have to
9 testify truthfully today. Am I right?

10 A. Yes, I do understand.

11 Q. And Dr. Winkler, you know that the reporter
12 can only take down verbal responses, so please be sure
13 to say yes or no. Do not shake your head or nod so that
14 she can make sure that there's a clear record; is that
15 clear?

16 A. That's clear.

17 Q. And, also, as the reporter just conveyed, she
18 can only take down one voice at a time. So I just ask
19 that you allow me to finish the question, and then wait
20 for your counsel, if she does object, to object and then
21 proceed -- basically proceed accordingly, whether or not
22 she tells you to answer the question. Is that clear?

23 A. Yes, I understand.

24 Q. You answered that you understood what I was

1 saying, right, Dr. Winkler?

2 A. Yes, I understand.

3 Q. So now, I'm sure that there's been a
4 significant amount of time that has passed since some of
5 the events in this lawsuit or that we're going to talk
6 about today that have transpired. So I'm going to ask,
7 you know, even if you don't remember the precise dates
8 or precise times or precise quantities, that you may be
9 able to estimate or kind of like, I guess -- like not to
10 estimate or approximate when things may have occurred or
11 quantities. You understand that I have the right to ask
12 you those questions; right?

13 A. Yes, I understand.

14 Q. Okay. And so I'm just going to ask you some
15 general questions just to begin with, and then kind of
16 proceed to some of the substance of the lawsuit.

17 Now, Dr. Winkler, have you taken any
18 medications within the last 24 hours?

19 MS. CANFIELD: Objection as to form. How
20 about last 24 hours that may affect his ability to
21 testify?

22 MS. HAGAN: No.

23 MS. CANFIELD: You're asking him to reveal
24 his medical health.

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1 MS. HAGAN: I just asked if he took any
2 medication. I'm not going there with the rest of
3 it.

4 Q. Have you taken any medication in the last 24
5 hours, Dr. Winkler?

6 MS. CANFIELD: I'm going to object. If
7 you're comfortable revealing your medical
8 condition, I'm not. I would say if there's any
9 medications that would affect your ability to
10 testify accurately and truthfully, that would be
11 an appropriate question.

12 MS. HAGAN: You can't coach the witness.

13 MS. CANFIELD: No. I'm asking you to ask him
14 that.

15 MS. HAGAN: Ms. Canfield, you can't tell me
16 how to ask questions. I asked the question the
17 way I did for a reason.

18 Q. Dr. Winkler, have you taken any medication in
19 the last 24 hours?

20 MS. CANFIELD: And I'm going to again object.
21 And Dr. Winkler, if you're not comfortable
22 responding to that, I'm fine with it, and we can
23 take it up with the court.

24 MS. HAGAN: Sure.

1 THE WITNESS: I'm comfortable responding.

2 MS. CANFIELD: Okay.

3 A. I take a medication for gastric reflux that
4 does not affect my abilities to participate in this
5 proceeding in any way.

6 Q. Have you taken any other medication besides
7 the medication for gastric reflux?

8 A. No.

9 MS. CANFIELD: Objection.

10 Q. So that's the only medication you've had
11 within the last 24 hours?

12 A. Correct.

13 Q. Have you ingest -- have you imbibed any
14 alcoholic beverages within the last 24 hours?

15 A. No.

16 Q. So Dr. Winkler, what is your highest level of
17 education?

18 A. Well, I have both a juris doctorate degree
19 and a -- what they call a doctoral degree in psychology.
20 I think they're roughly equivalent in level.

21 Q. Now, when did you get your law degree?

22 A. 1980.

23 Q. And where did you get the law degree?

24 A. Fordham Law School.

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1 Q. Okay. And where did you get your PsyD; is
2 that what they call it?

3 A. Correct. I got that from Yeshiva University.

4 Q. When did you get that degree?

5 A. 2006.

6 Q. Now, I also -- it was also brought to my
7 attention that you were a member of the police
8 department. When did you work there?

9 A. I worked there from 1981 until 2000.

10 Q. And you retired?

11 A. Correct.

12 Q. And what department did you work at?

13 A. The South Hampton Town Police Department,
14 which is on Long Island.

15 Q. And I'm assuming you got your law degree
16 right before you started at the police department,
17 interestingly enough. Did you -- did you practice
18 before you went into -- into the police department?

19 A. Yes, I did.

20 MS. CANFIELD: Objection.

21 Q. Okay. Where did you -- where did you work?

22 A. I worked for a while for a law firm in
23 Riverhead, and then I had my own private practice.

24 Q. Now, where -- what was the name of the law

10

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1 firm in Riverhead?

2 A. McNulty, Gilmartin, Haferly [ph.], Neshy
3 [ph.], that was the -- those were the partners.

4 Q. And how long were you at McNulty, et al. Law?

5 A. Roughly a year.

6 Q. So this is from 1980 to 1981?

7 A. Roughly, yes.

8 Q. And what was your area of expertise?

9 A. I didn't have any at that the point. I was a
10 new lawyer, and they had me covering various cases and
11 issues.

12 Q. And then you went into the police department?

13 A. That's correct.

14 Q. And you stayed at the same police department,
15 the South Hampton Law -- the South Hampton Police
16 Department for, I guess, the 19 years?

17 A. That's correct.

18 Q. Now, for your pension to vest, wouldn't you
19 have to stay at the police department for 20 years?

20 A. Yes. I worked part-time for that department
21 for a few years prior to going on full time. And that
22 time was counted towards vesting toward my pension.

23 Q. And how long did you work full -- part-time?

24 A. I think it was about four years.

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1 Q. And at any point, did you work as an
2 undercover police officer?

3 A. Yes.

4 Q. How long did you do that?

5 A. I would say I did it for about six years,
6 five years. I don't remember exactly.

7 Q. Do you know what years that you worked in
8 this capacity?

9 A. I would say early '90s. I believe it was
10 early '90s.

11 Q. And what department were you working in when
12 you were working in an undercover capacity?

13 A. At that point, I was assigned to the Suffolk
14 County District Attorney's Office, East End Drug Task
15 Force.

16 Q. So Dr. Winkler, have you ever been deposed
17 before?

18 A. No.

19 Q. Have you ever been sued before?

20 A. No.

21 MS. CANFIELD: I object -- objection to form.

22 Q. Have you ever sued anyone?

23 A. No.

24 Q. Have your ever been named as a defendant in

12

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1 any lawsuit?

2 A. No.

3 Q. Now, Doctor, have you ever been a witness in
4 any lawsuit?

5 MS. CANFIELD: Objection to form. You can
6 answer.

7 A. No.

8 Q. Now, when did you -- when did you obtain your
9 degree in psychology? I'm assuming that you did at some
10 point.

11 MS. CANFIELD: Objection to form. Asked and
12 answered. You can answer again.

13 A. 2006.

14 Q. Did you do any graduate work in psychology
15 before you got your PsyD?

16 A. Yes, I did.

17 Q. Where did you do that?

18 A. I received a master's degree in forensic
19 psychology from John Jay College.

20 Q. And when was that?

21 A. 2001.

22 Q. And did you get an undergraduate degree in
23 psychology?

24 A. No.

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1 Q. And what was your undergraduate degree in?

2 A. I received a -- earned, rather, a bachelor's
3 in business administration degree.

4 Q. And where is this from?

5 A. Pace University in Manhattan.

6 Q. And when did you receive this degree?

7 A. 1977.

8 Q. So did you do any fellowships upon your
9 completion of, I guess, either the PsyD or the master's
10 in forensic psychology?

11 A. Yes. I completed a forensic psychology
12 fellowship at Bellevue Hospital after completing my PsyD
13 degree.

14 Q. And when did you complete that?

15 A. That ran for a year from 2006 to 2007.

16 Q. And did you work with Dr. Ford or any of the
17 -- or Dr. Ford at that time?

18 A. I believe at that time, yes. I believe I was
19 working with Dr. Ford. I think she might have been a
20 fellow at that point.

21 Q. So you both were fellows at the same time?

22 A. If I'm remembering correctly, I also did a
23 pre-doctoral internship at Bellevue. So I don't recall
24 if I worked with Dr. Ford. That would have been the

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1 year before the fellowship. I don't recall if I worked
2 with her during that internship year or the fellowship
3 year.

4 Q. Did you publish a paper with Dr. Ford and Dr.
5 Virginia Barber Rioja?

6 A. I was part of the team, yes, that
7 co-published a paper.

8 Q. And that was in 2009; is that right?

9 A. I don't recall, but it sounds right.

10 Q. Okay. So how did it come -- what was your
11 first job that involved psychology or psychiatry?

12 A. My first job was at Bellevue on the forensic
13 inpatient unit.

14 Q. And when was that?

15 A. That was after I completed the fellowship in
16 2007.

17 Q. And how long did you stay there?

18 A. I stayed at that job for about one year.

19 Q. And what was your position exactly at that
20 time?

21 A. I was a psychologist on the forensic
22 inpatient unit.

23 Q. And what -- what functions did you perform at
24 that time?

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1 A. I did intake interviews for newly admitted
2 patients, had therapy patients, attended treatment team
3 meetings. Also, there were times when the psychologist
4 would do brief interviews of patients who had been sent
5 from Rikers Island for possible admission. We would do,
6 on a rotating basis, interviews to provide an opinion as
7 to whether the person -- the patient needed admission.

8 Q. Okay. And you did this for a year.

9 Now, what did you do after you left Bellevue?

10 A. Well, I still worked for Bellevue, but then I
11 began working at the Bronx Court Clinic.

12 Q. So you worked for Bellevue part time or --
13 how did that work that you worked in both places?

14 MS. CANFIELD: Objection to form. You can
15 answer.

16 A. I -- my job changed. I still worked at
17 Bellevue, but instead of being an inpatient
18 psychiatrist, I now worked full time at the Bronx Court
19 Clinic.

20 Q. So how did -- how did it come to you that you
21 went from the forensic inpatient unit to Bellevue's
22 Bronx Court Clinic?

23 A. I was told, it was around 2008, that the
24 funding for my line for the inpatient psychologist

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1 position would no longer be available after a certain
2 point and that there was an opening at the Bronx Court
3 Clinic if I wanted to take it, and I took it.

4 Q. Who told you that?

5 A. That was Dr. Hoge.

6 Q. And Dr. Hoge was who? What was Dr. Hoge's
7 position when he told you that?

8 A. He would have been the director of the
9 forensic psychiatry division in that -- at Bellevue at
10 that time.

11 Q. And the -- so you applied for the position in
12 the Bronx Court Clinic. Who interviewed you for that
13 position?

14 A. I recall meeting with Dr. Kaye. I don't know
15 if we actually interviewed. My memory is the job was
16 offered to me. I don't remember formally interviewing
17 for it.

18 Q. Okay. So you met with Dr. Kaye, but you
19 don't recall if you were formally interviewed by her or
20 anyone else for that matter; is that right?

21 A. I don't believe Dr. Kaye formally interviewed
22 me, no.

23 Q. Okay. So you ended up working with Dr. Kaye
24 at that time. Now, was she your supervisor at that

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1 time?

2 A. Yes, she was.

3 Q. Your supervisor wasn't Alan Elliot at that
4 time?

5 A. Well, they would both be considered my
6 supervisors. So Alan Elliot was the -- is the director
7 of psychology at Bellevue, so I would report to Dr.
8 Elliot. I think like on a monthly basis, we would check
9 in. But my direct day-to-day supervisor was Dr. Kaye.

10 Q. And when you say you reported directly to --
11 I mean you reported monthly to Dr. Elliot, what did that
12 entail?

13 A. We would meet roughly once a month just to
14 check in. Dr. Elliot checked in with all of the
15 psychologists just to see how things were going, seeing
16 if there were any problems.

17 Q. Now --

18 A. It was a routine supervision.

19 Q. I'm sorry.

20 Now, did Dr. Elliot -- who completed your
21 performance evaluations?

22 MS. CANFIELD: Objection to form. You can
23 answer.

24 A. I think it was Dr. Elliot.

1 Q. And did he process your time and leaves
2 requests?

3 MS. CANFIELD: Objection to form. You can
4 answer.

5 A. Yes, I believe he did.

6 Q. Now, you said that Dr. Kaye was your -- I
7 guess direct -- or your day-to-day supervisor. How did
8 she -- how did she supervise you on a day-to-day basis?
9 What functions did she perform?

10 A. Well, she was the director of the clinic. We
11 would see cases together. We would discuss clinic
12 policies. She would determine the schedule. If I had
13 questions about matters in the clinic, I would go to
14 her.

15 Q. And how was communication with Dr. Kaye about
16 those things?

17 A. It was fine.

18 Q. So she readily and willingly engaged you when
19 you had questions about, you know, the exams or the
20 process; would that be accurate?

21 A. Yes.

22 Q. And I'm assuming since Dr. Kaye would have
23 been at the clinic probably, I guess at this point,
24 about eight years. She had a pretty good idea as to how

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1 the clinic functioned and just the administration of the
2 examinations themselves; would that be accurate?

3 A. Yes.

4 MS. CANFIELD: Objection to form. You can
5 answer.

6 MS. HAGAN: For the record, the deponent said
7 yes.

8 A. Yes.

9 MS. HAGAN: Thank you.

10 Q. So Dr. Winkler, you worked at the forensic --
11 the Bronx Forensic Court Clinic from 2008 to 2000 --
12 March of 2018; is that right?

13 A. Yes. I think my first -- I think my last day
14 was actually in April, but -- in 2018.

15 Q. Now, during that time, how would you describe
16 your relationship with Dr. Kaye?

17 A. I think my relationship with Dr. Kaye overall
18 was a very good one.

19 Q. And could you elaborate?

20 A. Well, we were the only two members of the --
21 only two doctors in the clinic. There were certain
22 cases, once in a while, we necessarily didn't see eye to
23 eye on or certain ideas on how to approach a case. But
24 overall, we got along very well. Dr. Kaye is a very

1 knowledgeable clinician. I learned a lot from her. I
2 think we approached our interviews and our case
3 conceptualizations in a very similar manner.

4 Q. At some point, would you say that Dr. Kaye
5 helped you develop as a professional in the forensic
6 psychiatry field?

7 A. Yes, I think she did.

8 Q. And as a supervisor, would you say that Dr.
9 Kaye was fair?

10 A. Yes.

11 Q. And would you say she was helpful?

12 A. Yes.

13 Q. Now, initially -- at some point -- let me --
14 let me backtrack.

15 When you started -- when we discussed when
16 you went over to the clinic, we said that Alan Elliot --
17 Dr. Elliot was your indirect supervisor, and Dr. Kaye
18 was your direct supervisor. At some point, did Dr. --
19 did Dr. Jeremy Colley come into the picture?

20 A. Yes.

21 Q. Okay. When was that?

22 A. I don't remember the exact year, but Dr.
23 Colley eventually became the director of the forensic
24 psychiatry division at Bellevue. So since the clinic

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1 was part of that division, he became part of our
2 supervision structure.

3 Q. And when was that?

4 A. I don't remember what year he took over.

5 Q. Okay. Let's see. You said you don't
6 remember. Let's try to approximate then. Would you say
7 this is around 2010?

8 A. My sense is it would have been later than
9 that, but I honestly don't recall.

10 Q. I'm going to try to -- I'm going to try to
11 see if I can get some kind of estimate. Would -- would
12 it have been 2015?

13 A. That sounds -- it seems it was later to me.
14 Yeah, closer to when I left the Bronx Clinic when he
15 took over.

16 Q. So would this be around the time that Dr.
17 Ford came to CHS that Dr. Colley was your -- in the
18 supervisory orbit?

19 MS. CANFIELD: Objection to form. You can
20 answer.

21 A. Do you mean when Dr. Ford went to work for
22 CHS?

23 Q. Right.

24 A. I just want to clarify.

22

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1 Q. Yes.

2 A. I think so. Not exactly sure, but I think
3 so.

4 Q. So I guess the years that you worked with Dr.
5 Kaye at the Bronx Court Clinic from 2008 to 2018 --
6 April 2018, you would say that your working relationship
7 was -- was pretty good?

8 A. Yes, that's accurate.

9 MS. HAGAN: You went mute. I'm sorry.

10 THE WITNESS: Can you hear me now?

11 MS. HAGAN: I can hear you now.

12 A. Yes, that's accurate.

13 Q. Okay. So then what -- I -- and in April
14 2018, could you like list your -- the managerial
15 structure as you knew it at that time? So at that time
16 -- let me just be clear. Dr. Kaye was still your direct
17 supervisor, right, in April 2018?

18 MS. CANFIELD: Objection to form. You can
19 answer.

20 A. Yes, she was.

21 Q. And then who was Dr. Kaye's supervisor?

22 A. At that time, I believe it was still Dr.
23 Colley.

24 Q. And who was Dr. Colley's supervisor?

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1 A. I believe Dr. Colley reported directly to Dr.
2 Maryanne Badaracco.

3 Q. And do you recall who Dr. Badaracco's
4 supervisor was?

5 A. I don't know. Dr. Badaracco is the director
6 of psychiatry for the hospital. I'm not sure who she
7 answers to or reports to.

8 Q. Now, was there a time -- when is the first
9 time you learned of changes that were going to be taking
10 place with the forensic psychiatry clinics?

11 A. Are you referring to the CHS takeover?

12 Q. Yes.

13 A. We began -- when I say we, I mean Dr. Kaye
14 and I -- began to hear rumors about CHS wanting to take
15 over -- consolidate and take over the court clinics. I
16 believe that was in -- I think it was some point in
17 2017, I believe.

18 Q. Were there questions or issues raised with
19 the Office of Health and Mental Hygiene in 2015?

20 MS. CANFIELD: Objection to form. You can
21 answer.

22 A. I'm not -- I'm not sure what you mean by
23 issues raised with them.

24 Q. Like for example, the usage of redacted

24

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1 medical records. When was the first time you, I guess,
2 engaged about that?

3 MS. CANFIELD: Objection to form. You can
4 answer.

5 A. We went through a period where we started to
6 receive redacted medical records from Rikers Island. I
7 want to say that was somewhere -- it could have been
8 around 2015.

9 Q. Okay. And what was your position at that
10 time about the redacted medical records?

11 MS. CANFIELD: Objection to form. You can
12 answer.

13 A. I did not feel it was appropriate for them to
14 be redacted.

15 Q. Why not, Dr. Winkler?

16 A. Because we -- in making our determination as
17 to whether somebody is fit to proceed or not, we felt
18 that we needed all the information that could be made
19 available. And secondly, the process they were using at
20 the time, from what we were told, involved whoever was
21 redacting the records, entering some type of a key word
22 that would then result in large portions of records
23 being redacted. And then there were some records that
24 were completely useless because they were so heavily

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1 redacted.

2 Q. Now, did you believe that the medical
3 information was relevant in terms of determining whether
4 nor not a defendant was fit to proceed, Dr. Winkler?

5 A. The -- the issue was that without the
6 redacted -- we didn't know what was redacted, and it
7 could have been potentially useful or beneficial in
8 determining if someone was fit to proceed.

9 Q. Now, at any point, did you voice your
10 concerns about the provision of redacted medical
11 records?

12 A. Yes.

13 Q. When did you do that?

14 A. Around the time that we started to experience
15 the problem, Dr. Kaye and I had a lot of discussions
16 about it. At some point, I contacted -- I forget where
17 we got the information, but we found -- I believe we
18 learned that a standard order for the records that we
19 had always used, the legal department at Rikers Island
20 had made a determination that that order was no longer
21 sufficient to receive the type of information that was
22 now being redacted.

23 Q. Okay. So do you recall who in the Rikers
24 Legal Department made that decision?

1 A. I do not. Sorry.

2 Q. Now, you said you and Dr. Kaye discussed this
3 at length. Who else did you discuss your position on
4 redacted medical records?

5 A. I'm fairly --

6 MS. CANFIELD: Objection to form. You can
7 answer.

8 A. I'm fairly certain that Dr. Colley was
9 involved in the discussions. There were some -- not
10 that they were involved in discussions, but I believe
11 certain judges were advised that we were getting
12 redacted records. I actually had a conversation at one
13 point with a representative of the legal department at
14 Rikers Island in order to prepare a new form order that
15 would conform to what the wording that they wanted in
16 order for us to now receive non-redacted records.

17 Q. Now, who was your supervisor at that time
18 when you worked with the Rikers Legal Department to
19 develop a new form?

20 A. Dr. Kaye.

21 Q. And who was your indirect supervisor?

22 A. It still would have been Dr. Elliot.

23 Q. Okay. Now, at any point, did you engage a
24 Mr. Volpe from the Office of Mental Health and Hygiene

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1 about this issue?

2 A. The name is familiar. Yeah, John Volpe. I
3 don't recall -- I remember -- I recall the name. I
4 don't recall what interactions I had with him though.

5 Q. Do you recall an interest of Mr. Volpe in the
6 Miguel Figueroa case?

7 MS. CANFIELD: What is that case again?

8 MS. HAGAN: Miguel Figueroa.

9 A. I recognize the name. I don't remember the
10 details though.

11 Q. Was there an -- in this instance, and I'm
12 referring to Miguel Figueroa, were there -- did he --
13 was he an inmate that presented particular problems as
14 far as being produced?

15 MS. CANFIELD: Objection to form. You can
16 answer.

17 A. I think he -- I know which inmate you're
18 speaking about. My recollection was that he was, yes.

19 Q. And what do you recall exactly about that,
20 about Mr. Figueroa?

21 A. I'm not sure if I'm remembering the correct
22 defendant, but there was a defendant who at one point
23 was a particular behavior problem at Rikers Island. And
24 he had been transferred repeatedly from Rikers to

1 Bellevue and from Bellevue back to Rikers Island. And
2 eventually, my understanding -- excuse me, was that
3 Bellevue, which would have been Dr. Colley, I believe at
4 the time making the decisions, said that they would no
5 longer admit that patient at Bellevue Hospital. I don't
6 recall definitively if that was Mr. Figueroa, but I
7 think it might have been him.

8 Q. Do you recall having discussions about a
9 forced order and whether or not that would be
10 appropriate in this context with Mr. Figueroa?

11 MS. CANFIELD: Objection as to form.

12 A. If Mr. Figueroa, again, I have to qualify it.
13 If he, in fact, was the defendant I'm speaking of, then
14 yes, I think we did have discussions about a forced
15 order about that defendant.

16 Q. And do you remember the content of those
17 discussions?

18 A. I don't.

19 Q. Now --

20 A. Other than -- other than a force order for
21 whatever reason would have been required in the content
22 of the discussion that I would imagine.

23 Q. Was there some interference with Mr.
24 Figueroa's 730 examination during that time to get him

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1 off of Rikers Island?

2 MS. CANFIELD: Objection as to form. He can
3 answer.

4 A. Again if -- if Mr. Figueroa is the defendant
5 that I'm thinking of, we received word at one point that
6 Patsy Yang had called the district attorney's office to
7 ask if Mr. Figueroa could be found unfit without an
8 examination and moved out of Rikers Island.

9 Q. And what was your -- what did you think of
10 that?

11 A. I thought it was inappropriate.

12 Q. Could you elaborate?

13 A. Well, someone cannot be found unfit to
14 proceed without an examination per the statute.

15 Q. And when -- when Dr. Yang attempted to -- I
16 guess when Dr. Yang engaged in this effort, which
17 evaluators did she expect to find him unfit?

18 MS. CANFIELD: Objection to form. You can
19 answer.

20 A. Honestly, I can't honestly say that she --
21 all I know is that she asked -- the information I
22 believe we received is that she asked if it could be
23 done. I don't know if she -- I don't recall if she told
24 them she wanted it done, but my understanding was that

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1 it would -- the DA would just have -- DA's office would
2 just have said that that defendant was unfit. It never
3 happened. So I don't know what mechanism, but there
4 would have been no other examiners to see him other than
5 myself and Dr. Kaye.

6 Q. Now, did you ever hear from Dr. Yang directly
7 yourself at that time?

8 A. Not that I recall.

9 Q. Okay. Had you ever met Dr. Yang at that
10 point?

11 A. No, I don't think I had.

12 Q. At that point, had Dr. Yang revealed her role
13 or her position as far as the court clinics at that
14 point?

15 MS. CANFIELD: Objection as to form. You can
16 answer.

17 A. I'm not sure what you mean by her role or her
18 position.

19 Q. Well, you just said that Dr. Yang contacted
20 the DA's office to see if Mr. Figueroa could be found
21 unfit without an examination; right?

22 A. That's correct.

23 MS. CANFIELD: Objection to form. You can
24 answer.

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1 A. That's correct.

2 MS. HAGAN: He said sure. Right?

3 Q. Huh?

4 A. I said that is correct.

5 Q. Right. At that time, what did you understand
6 Dr. Yang's position to be?

7 MS. CANFIELD: Objection to form. You can
8 answer.

9 A. As far as I knew, she was the head of CHS.
10 I'm not sure her exact title.

11 Q. Now, what did you understand her position to
12 be as it pertained to the court clinics?

13 MS. CANFIELD: Objection to form. You can
14 answer.

15 A. I don't recall. I'm trying to remember the
16 time frame of when that happened. I don't recall at
17 that point if she had any direct -- I don't know of any
18 direct involvement by her with the court clinics at that
19 point.

20 Q. Did you find it odd that she would have
21 contacted the DA's office regarding Mr. Figueroa, since
22 you hadn't known her to be directly involved with the
23 court clinics?

24 MS. CANFIELD: Objection to form. You can

1 answer.

2 A. It was certainly an unusual request.

3 Q. How often was the Department of Health &
4 Mental Hygiene involved in the administration of the
5 forensic evaluations at the court clinics?

6 MS. CANFIELD: Objection to form. You can
7 answer.

8 A. Well, do you mean the day-to-day operations,
9 like the evaluations that we did?

10 Q. I guess we can start with the day to day and
11 just the overall -- general operations of the clinic.

12 A. Well, they weren't involved in the day-to-day
13 operations. But OMH is eventually involved in most
14 cases where someone's found unfit. They, depending on
15 the charges under the law, often go into OMH custody for
16 restoration of fitness.

17 Q. And would this be Kirby?

18 A. It could be Kirby, or it could be Mid-Hudson.

19 Q. And how often would you say that -- let me --
20 let me rephrase that.

21 The Office of Mental Health, who would they
22 typically engage from CHS regularly? Would that have
23 been the director of the clinic or someone above the
24 director?

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1 MS. CANFIELD: Objection to form. You can
2 answer.

3 A. We didn't really have -- I don't know that
4 they have had, rather, any direct contact with the
5 clinics. The -- once somebody in the example that I
6 just used about being found unfit, that would happen
7 with the court. So our paperwork would go to the court.
8 And then assuming the judge agreed with our opinion and
9 there was an order for that defendant to be transferred,
10 then that would take place between the court, Rikers
11 Island, OMH, whatever the facility was.

12 Q. And I just want to make sure that the
13 record's clear, because there's a state equivalent and a
14 city equivalent of the Office of Mental Health and
15 Hygiene. Now, Dr. Yang worked at the department of
16 mental -- the Department of Mental Health and Hygiene.
17 That would be the city agency; is that right?

18 MS. CANFIELD: Objection to form. You can
19 answer.

20 A. Yes, I believe that's right.

21 Q. And OMH that you're talking about with Kirby
22 and Mid-Hudson, that's the state agency; is that right?

23 A. That's correct.

24 Q. So now, Dr. Winkler, were you -- what was

1 your -- let me rephrase this.

2 What was your understanding of the transition
3 from, let's say, Corizon to CHS; what do you remember
4 about that?

5 MS. CANFIELD: Objection to form. You can
6 answer.

7 A. What I recall was that -- I recall hearing
8 that Corizon was a contract agency with the city, and
9 that the city had decided they no longer wanted to use a
10 contract agency to supply those services, and that they
11 wanted CHS to take over those services as a city agency.

12 Q. Now, I guess now that we're kind of talking a
13 little bit about Dr. Yang, when was the first time you
14 met Dr. Yang, actually?

15 A. As far as I recall, the first time I met Dr.
16 Yang was -- I believe it was towards the end of 2017.
17 She came to the Bronx Court Clinic with a number of
18 other individuals for a meeting with Dr. Kaye and
19 myself.

20 Q. And what do you remember about that -- about
21 that meeting?

22 A. I remember that we had been hearing, as I
23 mentioned earlier, about rumors that CHS was going to
24 take over the court clinics. There were various rumors

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1 circulating that the clinics would then be closed and
2 the clinicians would be moved to Rikers Island. And
3 what I remember about that meeting was that Dr. Yang and
4 other individuals came to the court clinic to speak to
5 us about the transition and the (indiscernible).

6 Q. And what was your impression of Dr. Yang at
7 that time?

8 A. In terms of what?

9 Q. Just in general. I mean she was there, she's
10 speaking to you.

11 A. I didn't really form any impression about
12 her.

13 Q. At any point, did you believe that some of
14 the goals that Dr. Yang and CHS management had for the
15 court clinics and the turnarounds of the 730 exams were
16 unrealistic?

17 MS. CANFIELD: Objection to form. You can
18 answer.

19 A. Nothing was discussed about that at that
20 meeting. Are you talking about at any point since CHS
21 has taken over?

22 Q. Yes.

23 A. At one point -- well, I don't even know if
24 this was a CHS program. At one point, the mayor's

1 office on criminal justice developed a pilot project,
2 which was implemented in the Queens Court Clinic. And I
3 felt that those turnaround times, goals for reports,
4 seemed short to me.

5 Q. Now, who was running the Queens Court Clinic
6 at that time? Who was the director?

7 A. At that time, it would have been Dr.
8 Elizabeth Owen.

9 Q. Now, does Dr. Owen still work at CHS?

10 A. No.

11 Q. Now, you still work at CHS; right?

12 A. Yes.

13 Q. You said yes; right?

14 A. Yes.

15 Q. Okay. Now, do you know why Dr. Owen no
16 longer works at CHS?

17 A. She resigned.

18 Q. Was this a voluntary resignation?

19 A. I don't know.

20 Q. Okay. When did she resign?

21 A. About two or three weeks ago.

22 Q. Has a replacement been put in place yet?

23 A. Not as far as I know.

24 Q. Now, what were the goals identified with the

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1 Queens Court Clinic that you, I guess, had some
2 skepticism about?

3 MS. CANFIELD: Objection to form. He can
4 answer.

5 A. Are you referring to report preparation
6 times?

7 Q. Any. Well, we can start with that.

8 A. Well, the only thing that I had any question
9 about was the report preparation time. I believe their
10 goal was a seven-day turnaround time for misdemeanors
11 and a 14-day turnaround time for felony cases.

12 Q. And you took issue with that?

13 A. I wouldn't say -- I wouldn't say I took issue
14 with it. I would say that I didn't feel it was
15 realistic in all cases, because different cases have
16 different requirements in terms of how quickly they can
17 be completed.

18 Q. Well, why wasn't it actually realistic? Like
19 as far as you said, different cases have different, I
20 guess, circumstances that would necessitate different
21 time frames; would that be accurate?

22 MS. CANFIELD: Objection to form. You can
23 answer.

24 A. That's accurate.

1 Q. So what would influence the turnaround of the
2 given case?

3 A. If a defendant -- what would influence it
4 would be, for example, if a defendant needs to be seen
5 for a second interview, if a defendant requires
6 psychological testing to qualify any potential
7 psychiatric problems, if the examiners required medical
8 records, either from Rikers Island or other hospitals
9 where the defendant had been treated.

10 Q. So those would be, I guess, the major factors
11 that would basically impact -- influence or impact the
12 turnaround. For example, like, let's say -- let me just
13 ask. Are there instances wherein defendants or inmates
14 refuse to appear for your scheduled examinations?

15 A. Yes.

16 Q. Okay. So that would impact the turnaround;
17 am I right?

18 A. Correct. That's another factor.

19 Q. Now, I'm going to go back to the 2017 meeting
20 that you had for the first time with Dr. Yang. During
21 that time, was a discussion about HIPAA releases being
22 presented raised by Dr. Yang?

23 A. I'm sorry.

24 MS. CANFIELD: Objection to form. You can

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1 answer.

2 A. I didn't hear the entire question.

3 Discussion of what?

4 Q. Didn't Dr. Yang say that she wanted to
5 present HIPAA releases to all defendants at arraignment
6 at that time?

7 MS. CANFIELD: Objection to form. You can
8 answer.

9 A. I don't recall if she said that at that
10 meeting. That idea was floated at some point. I don't
11 recall if it came from Dr. Yang or if it was a point
12 that was discussed among the different court clinic --
13 clinicians in the different boroughs. I don't recall
14 Dr. Yang saying that at that meeting.

15 Q. Do you recall Dr. Kaye expressing concern
16 about HIPAA releases at that time?

17 MS. CANFIELD: Objection to form. You can
18 answer.

19 A. I recall at whatever point that issue came
20 up, and I don't recall that it happened at that meeting.
21 But at whatever point we learned about that idea, both
22 Dr. Kaye and I expressed opposition to it.

23 Q. Okay. At any point, do you recall Dr. Yang
24 ever say, "If you don't like it, there's the door"?

1 MS. CANFIELD: Objection to form. You can
2 answer.

3 A. I recall at the -- at the meeting, which I
4 believe was at the end of 2017, I forget what it was in
5 reference to, what it was connected to, but I seem to
6 recall Dr. Yang saying something to the effect of if
7 they don't like it, they can leave.

8 Q. Did she say also that we've got the money and
9 if you don't like it, then there's the door?

10 MS. CANFIELD: Objection to form. You can
11 answer.

12 A. I don't recall any reference to the money
13 being connected to the statement about not liking it,
14 and I don't recall if she said there's the door. My
15 recollection is she said, if they don't like it, they
16 can leave. During that meeting, there was a discussion
17 about CHS having a different or separate budget line
18 with City Hall, which would enable them to make staffing
19 and other improvements, that for example, Bellevue and
20 Kings County, who had staffed the clinic previously,
21 would not have been able to do.

22 Q. And how did you learn about this?

23 MS. CANFIELD: Objection to form. You can
24 answer.

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1 A. Learn about what?

2 Q. About the different -- separate budget line
3 for CHS versus Bellevue and Kings County?

4 A. Somebody said it at that meeting. I don't
5 remember if it was Dr. Yang, or it was someone from CHS
6 who said that.

7 Q. Now, at any point, were you asked or
8 approached about working in the work group?

9 A. Do you mean after CHS took over?

10 Q. Yes.

11 A. After the takeover started?

12 Q. Right.

13 A. Yes.

14 Q. And when would you say that happened?

15 A. I believe it happened somewhere in the
16 beginning of 2018. Maybe end of 2017, beginning of
17 2018.

18 Q. Now, when -- when, I guess, CHS took over,
19 how do you -- do you recall Dr. Kaye's reaction as the
20 takeover started?

21 MS. CANFIELD: Objection to form. You can
22 answer.

23 A. Can you be more specific? I'm not sure what
24 you're referencing.

1 Q. Well, you know, there may have been an
2 exchange with Dr. Yang and Dr. Kaye regarding the HIPAA
3 releases at that time, or at least she disagreed with
4 that as far as requiring the -- or seeking to have the
5 inmates execute on these HIPAA releases. Do you recall
6 any animosity that may have, I guess, emerged around
7 that time between Dr. Kaye and Dr. Yang?

8 MS. CANFIELD: Objection to form. You can
9 answer.

10 A. Not that I recall.

11 Q. Did you ever tell Dr. Kaye that there was a
12 power struggle between she and Dr. Kaye -- Dr. Yang?

13 A. Did I tell Dr. Kaye there was a power
14 struggle between her and Dr. Yang?

15 Q. Right.

16 A. I don't recall saying that.

17 Q. Did you ever hear any complaints about Dr.
18 Kaye from Dr. Yang?

19 A. No.

20 Q. Did you hear any complaints about Dr. Kaye
21 from Dr. Ford?

22 A. Not that I recall.

23 Q. Now, at some point, Dr. --- you and Dr. Kaye
24 assisted Dr. Ford when she, I guess, worked for --

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1 worked with the clinics prior to her position at CHS;
2 isn't that right?

3 MS. CANFIELD: Objection to form. You can
4 answer.

5 A. I don't know what you mean assisted her. Can
6 you be more specific?

7 Q. For example, there was a backlog, I believe,
8 at the Manhattan Court Clinic. And it appeared that you
9 and Dr. Kaye may have worked to address that backlog.
10 Do you remember that?

11 MS. CANFIELD: Objection to form. You can
12 answer.

13 A. I do recall seeing some Manhattan cases
14 because they had a backlog, yes.

15 Q. And when did that take place?

16 A. I honestly don't recall.

17 Q. But this is before Dr. Ford assumed her
18 capacity with CHS; is that right? This is before --
19 this is the first time she was working with the clinics?

20 MS. CANFIELD: Objection as to form. You can
21 answer.

22 A. I think it was, but I'm not certain.

23 Q. Now, did Dr. Ford play any part in you being
24 hired at CHS -- not CHS. We're talking about the Bronx

1 Court Clinic. I'm sorry.

2 MS. CANFIELD: Objection to form. You mean
3 before CHS or after CHS?

4 MS. HAGAN: Before CHS.

5 A. So you mean when I got hired to work at the
6 Bronx Court Clinic?

7 Q. Initially, yes.

8 A. No, she did not.

9 Q. Now, you were eventually promoted to director
10 of the Brooklyn Court Clinic; right?

11 A. Yes.

12 Q. Now, did Dr. Ford encourage you to seek that
13 promotion?

14 A. The process was that once CHS took over the
15 clinics, they had an open position for a director of all
16 the clinics. And I applied for that job and was not
17 given that job. And I got a call from Dr. Ford to tell
18 me that I had not been chosen for the job, and she told
19 me that there were open director positions at the
20 Manhattan and the Brooklyn clinics and asked me if I
21 would be interested in one of those jobs. I told her
22 that I would need to think about it. I called her the
23 next day. She said the Manhattan position was no longer
24 available but Brooklyn still was, and I said I would

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1 take Brooklyn.

2 Q. And what made you decide to take the Brooklyn
3 Court Clinic director position?

4 A. It was a promotion. It was an opportunity to
5 run my own clinic.

6 Q. But not because of the working conditions at
7 the Bronx Court Clinic?

8 A. No.

9 Q. You said no?

10 A. No.

11 Q. Would you say that Dr. Kaye -- let me scratch
12 that.

13 So would you say that the work environment at
14 the Bronx Court Clinic was -- how -- let me stop there.
15 How would you describe the working conditions at the
16 Bronx Court Clinic at that time right before you left?

17 A. Are you talking about the case load, the
18 relationship between Dr. Kaye and I? What are you
19 referencing?

20 Q. Okay. Well, let's start, the relationship
21 between you and Dr. Kaye at the time, how was it?

22 A. It was fine.

23 Q. Okay. Was the -- was the environment at the
24 Bronx Court Clinic combative?

MS. CANFIELD: Objection to form. You can answer.

A. No.

MS. HAGAN: He said no.

Q. Was the environment at the Bronx Court Clinic adversarial?

A. No.

Q. Did it seem as if Dr. Kaye was working with the defense community to set people up?

MS. CANFIELD: Objection to form. You can answer.

A. To set people up for what?

Q. Well, I guess, perhaps, for additional scrutiny or for targeting by just -- I don't know. Was it hostile to, I guess, people who were outside of -- I guess, outside of their cliques, as people would call it?

MS. CANFIELD: Objection to form. You can answer.

A. You mean defense attorneys or court personnel that we worked?

Q. Well, let's break it -- let's flush it down.

Did Dr. Kaye have a good relationship with the defense community?

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1 A. Yes.

2 Q. And when I say "the defense community," can
3 you list out the various organizations she may have
4 engaged during that time, do you recall?

5 A. Yes. I recall that we engaged with Legal
6 Aid, Bronx Defenders Service or Society, I forget what
7 it's called. We had also -- we would engage with 18B
8 attorneys, assigned attorneys. And every once in a
9 while, we would engage with a private pay attorney.

10 Q. So you -- how would you describe Dr. Kaye's
11 relationship with the Bronx Defenders?

12 A. Initially, there were some issues with Bronx
13 Defenders based upon, I would say, the fault of the
14 attorney, quite frankly, not really knowing or following
15 the parameters of how the evaluations were done. I did
16 not witness it, but I remember Dr. Kaye telling me at
17 one point, Bronx Defenders attempted to have a social
18 worker sit in on an evaluation under the guise of being
19 an attorney when they weren't actually an attorney. I
20 wasn't present for that. But then I believe Dr. Kaye
21 spoke with the particular attorney at Bronx Defenders
22 that I'm referencing. And then after that, actually the
23 relationship was rather good.

24 Q. And when would you say that took place?

1 A. Wow, a few years before I left. Maybe 2015,
2 2016. I don't really remember.

3 Q. And how would you say her relationship was
4 with Legal Aid?

5 A. Very good.

6 Q. And the 18B attorneys?

7 A. It was fine. There would always be an
8 individual attorney who through, quite frankly, no fault
9 of ours, Dr. Kaye's or mine, who was difficult to deal
10 with. But you know, 18B is different attorneys;
11 whereas, Bronx Defenders and Legal Aid, you deal with
12 the same attorney, usually. But overall, I would say it
13 was fine.

14 Q. And what about the judges in the Bronx
15 Supreme Court?

16 A. What about them?

17 Q. How was her -- how was her relationship with
18 them?

19 A. Very good.

20 Q. Would it be fair to say that Dr. Kaye was
21 well respected amongst these different -- would it be
22 fair that Dr. Kaye was fairly well respected?

23 MS. CANFIELD: Objection to form. You can
24 answer.

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1 A. By who?

2 Q. Let's say the Bronx Defenders, let's go with
3 that.

4 A. I'm sorry. I didn't hear the -- the Bronx
5 what?

6 Q. The first one, as far as the Bronx Defenders,
7 would you say that Dr. Kaye was well respected?

8 A. I think eventually, once the initial
9 friction, for lack of a better word, was resolved, yes.

10 Q. And would you say she was well represented
11 with Legal Aid?

12 A. Yes.

13 Q. And then would you say that Dr. Kaye was well
14 respected by the judges?

15 A. Yes, I would.

16 Q. And would you say that Dr. Kaye's
17 relationship with these various stakeholders enabled you
18 all to run the court clinics effectively?

19 MS. CANFIELD: Objection to form. He can
20 answer.

21 A. Yes, I would.

22 Q. Do you believe that Dr. Yang, Dr. Ford,
23 and/or Dr. Jain, effectively leveraged Dr. Kaye's
24 relationship with -- with the Bronx Defenders, Legal

1 Aid, and the judges in the unit in the --

2 MS. CANFIELD: Objection to the form.

3 Q. -- in the area?

4 MS. CANFIELD: Objection to form. You can
5 answer.

6 A. I don't know what you mean by "effectively
7 leveraged." Can you be more specific?

8 Q. Well, did they actually approach Dr. Kaye to
9 see if she could facilitate a relationship with these
10 various entities when they came on board?

11 MS. CANFIELD: Objection to form. You can
12 answer.

13 A. I don't recall specifically if they did, but
14 as -- I believe Dr. Kaye was the longest employed
15 clinician in the clinics at that time. So it would have
16 made sense to approach her with questions about
17 operations, et cetera.

18 Q. Did they?

19 MS. CANFIELD: Objection to form. You can
20 answer, if you're able.

21 A. Who are you referring to again? Tell me the
22 doctors you're referring to, Dr. Jain and who else?

23 Q. Dr. Jain, Dr. Yang, and/or Dr. Ford, and I
24 guess Dr. MacDonald. I'm sorry. I didn't mention him.

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1 A. I don't know that Dr. MacDonald or Dr. Yang
2 ever did. I think at some point Dr. Ford, there might
3 have been discussions about how to handle certain issues
4 at the clinic. And I don't know about -- I'm not sure
5 about Dr. Jain's interactions.

6 Q. Now, at any point, did Dr. Jain reach out to
7 you to, I guess to -- I guess get insight as to how to
8 engage Dr. Kaye?

9 MS. CANFIELD: Objection to form. You can
10 answer.

11 A. He didn't reach out to me necessarily as how
12 to engage Dr. Kaye. But he did ask me at -- sometimes
13 about the clinic, just overview of the operations of the
14 clinic.

15 Q. How would you describe the dynamic between
16 Dr. Jain and Dr. Kaye?

17 MS. CANFIELD: Objection to form. You can
18 answer.

19 A. I wasn't present for their interactions,
20 other than an occasional director's meeting. The little
21 bit I saw at those meetings seemed professional,
22 cordial. At those meetings, we were often asked to
23 provide opinions about things, and sometimes we did not.
24 Some of us didn't agree with other's opinions.

1 Q. When you say some of us didn't agree with
2 other's opinions, what do you mean?

3 A. Well, some of the directors would not
4 necessarily agree about opinions about procedures in the
5 clinics or proposed procedures, common discussion about
6 various operating issues.

7 Q. I guess I wanted to ask specifically about,
8 did Dr. Jain ever complain to you about Dr. -- Dr. Kaye?

9 A. No.

10 Q. Okay. Did Dr. Kaye complain to you about Dr.
11 Jain?

12 A. Yes.

13 Q. What did she complain about?

14 A. I recall at one point, she said that she did
15 not like to do interviews with him for evaluations
16 because he had a different style of interviewing that
17 didn't necessarily dovetail with how she was used to
18 doing her interviews. I don't know that she necessarily
19 got along well with Dr. Jain after the takeover.

20 Q. Could you repeat that. I didn't hear that.

21 A. I said I don't know -- I can't really provide
22 a lot of specifics, but my sense was that she did not
23 get along well with Dr. Jain.

24 Q. Did Dr. Jain get along well with Dr. Kaye?

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1 A. I don't know. I wasn't present for their
2 interactions.

3 Q. At any point, did you ever tell Dr. Kaye that
4 Dr. Jain was naive?

5 A. I think I did mention that to her at one
6 point, yes.

7 Q. Do you recall the context of that
8 conversation?

9 A. I'm trying to remember. I honestly don't
10 recall if it was some -- I don't recall where it came
11 up, honestly. I do remember making that comment to her
12 though.

13 Q. Did you ever complain to Dr. Kaye that Dr.
14 Jain's exams were long and irrelevant -- and had
15 irrelevant detail?

16 A. I recall telling Dr. Kaye that I thought Dr.
17 Jain's interviews were at times too long. Just my
18 opinion. We all have our own ways of doing interviews.
19 I remember telling Dr. Kaye, for example, that Dr. Jain
20 would always include a formal mental status that some of
21 us do not do unless it was necessary. So there were
22 differences in interview style that I do recall telling
23 her about.

24 Q. Did you ever tell her that the staff at the

1 Brooklyn Court Clinic hated doing exams with Dr. Jain?

2 A. I don't know if I used the word "hated." If
3 I did, it was probably meant more as a joke. But I did
4 communicate to her that the staff would prefer not to do
5 interviews, because his interviews were so long, but
6 nobody ever refused to do an interview with him.

7 Q. Now, did you ever tell Dr. Jain that you felt
8 that his reports were too long?

9 A. I did tell him at one point that -- I don't
10 think I used the words "Your reports are too long." But
11 I remember commenting to him that his reports were
12 longer than mine and that he wrote long reports.

13 Q. Did he become defensive when you talked to
14 him about that?

15 A. I don't remember him becoming defensive. I
16 remember him just referencing his training. I actually
17 remember discussing with him about the mental status
18 exams, which I mentioned earlier, and his -- he gave me
19 his rationale for it, that he would rather have the
20 information in the report if he had to testify. But I
21 don't recall him becoming defensive.

22 Q. Now, at any point with the working group, did
23 Dr. Kaye ever complain to you about not being invited to
24 participate in that?

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1 A. I do recall her complaining about that, yes.

2 Q. Can you ex -- can you elaborate?

3 A. I forget which meetings -- I believe she --
4 she did not participate in -- I forget how many meetings
5 we had. We had a few. I forgot which ones she was not
6 there for, but I do recall her complaining that she had
7 not been invited.

8 Q. And was there a time that she complained that
9 you had been invited instead of her?

10 A. Yeah. I think she did say something to that
11 effect. But I don't think it was a -- I shouldn't have
12 been there, and she should. I think it was if I was
13 there, she should have been there situation.

14 Q. Did you agree with her?

15 A. Yeah. I think she should have been there.

16 Q. Now, who made the decision to invite you and
17 not Dr. Kaye?

18 A. I think it was Dr. Ford.

19 Q. Did Dr. Ford approach you directly about
20 going to the work group meeting?

21 A. Not directly. I think -- I think we got -- I
22 think it was an email process where -- I forget. I
23 think it started out as they wanted two representative
24 from each clinic. I don't remember how I wound up being

1 designated to go.

2 Q. Now, by the time CHS took over the court
3 clinics, how would you describe how Dr. Kaye was being
4 treated by CHS management?

5 MS. CANFIELD: Objection to form. You can
6 answer.

7 A. What do you mean by being treated? That's
8 pretty broad.

9 Q. Well, you said they invited you, if not Dr.
10 Kaye, to the work group. Or, I can't say "they," well,
11 Dr. Ford, specifically, in this instance. Were there
12 any other times where you -- you may have observed that
13 Dr. Kaye may not have been treated fairly, perhaps, by
14 CHS management?

15 MS. CANFIELD: Objection. Objection. I
16 mean, I don't think we even have timelines as to
17 when this happened, but go ahead. He can answer.

18 MS. HAGAN: When CHS took over. That's what
19 I'm saying. That's the timeline. CHS took over
20 in 2000 -- we're not sure when CHS took over.
21 That's not clear.

22 MS. CANFIELD: No. What's not clear is when
23 -- when not being invited to this meeting, because
24 I don't know when that happened either. But go

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1 ahead, you can answer.

2 MS. HAGAN: You can't coach the witness, Ms.
3 Canfield.

4 MS. CANFIELD: I'm not. I'm just trying to
5 get a clear record, but go ahead.

6 MS. HAGAN: You'll have an opportunity to do
7 so at the end.

8 MS. CANFIELD: Okay. I know. I directed the
9 witness to go ahead.

10 MS. HAGAN: Yes.

11 A. Ms. Hagan, please ask your question again.

12 Q. Yeah. During the time that CHS took over,
13 right, how would you say that Dr. Ford treated Dr. --
14 Dr. Kaye?

15 A. I don't know that I can comment on that. I
16 wasn't present. The takeover happened over a number of
17 months, so I wasn't present for interactions between
18 them.

19 Q. What about Dr. Jain and -- and Dr. Kaye?

20 A. I wasn't present at all for interactions
21 between Dr. Jain and Dr. Kaye, because I was already
22 down in Brooklyn by the time Dr. --

23 Q. So at any point given point, for example, did
24 Dr. Kaye complain to you about the shift change that she

1 was experiencing?

2 A. Yes, she did.

3 Q. What do you recall about that complaint?

4 A. I recall that she told me -- I forget what
5 her original shift was. It might have been 9 to 5:30.
6 I'm not sure. But I remember her telling me that her
7 shift had been changed, I believe, to start a half hour
8 earlier.

9 Q. At any point, for example, did Dr. Kaye tell
10 you that she was being made to work more hours than the
11 other directors?

12 A. I don't recall her saying that.

13 Q. What do you recall her saying?

14 A. What I recall her saying was -- about that
15 shift change was that it was -- she felt it was -- it
16 violated some prior agreement or -- or something between
17 doctors' counsel, her union. And I'm not sure of that
18 agreement, whether it was maybe H&H about shift times or
19 number of hours. And I -- I remember her saying that
20 she felt that violated that agreement.

21 Q. At any point, did she tell you that she was
22 made to report to work at 8:00 in the morning?

23 A. I thought it was 8:30, but she might have
24 said that she had been at some point. I'm not positive.

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1 Q. Now, were you -- were you aware of any issues
2 that Dr. Kaye was experiencing with childcare at that
3 time?

4 A. Yes.

5 Q. What do you remember about that?

6 A. What I remember was that one of her children
7 has or had a fairly serious allergic condition. I think
8 maybe it's called a chemical allergy or something to
9 that effect. And I remember her saying that having to
10 come to work earlier, interfered with her ability to
11 provide him some treatment or assistance that he needed
12 in the morning.

13 Q. And do you ever recall Dr. Kaye complaining
14 about pay equity to Dr. Ford while you were there?

15 MS. CANFIELD: Objection as to form. You can
16 answer.

17 A. I don't know about her -- I don't know if she
18 complained to Dr. Ford, but Dr. Kaye did complain to me
19 several times about pay inequity.

20 Q. What did she -- what did she complain about
21 specifically? What did she say?

22 A. She said, from what I recall, that she was
23 paid less than her counterpart in Manhattan.

24 Q. And who would that have been?

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1 A. I believe it was both for Dr. Richard Rosner.
2 Then after he left, I believe Dr. Steve Ciric took over.
3 And I believe, from what I recall, she claims she was
4 paid less than both of them.

5 Q. Now, Dr. Winkler, I don't want to go too far
6 astray from the hours. What -- what are your hours at
7 clinic director in Brooklyn?

8 A. 9 to 5.

9 Q. Okay. And have those always been your hours?

10 A. Yes.

11 Q. And how long is your lunch?

12 A. One hour.

13 Q. Are you made to sign in and out at specific
14 times?

15 A. No.

16 Q. Okay. And when you submitted your reports,
17 your time sheets, who did you submit them to?

18 A. I'm sorry?

19 MS. CANFIELD: Objection to form.

20 Q. When you submitted your time sheets, who did
21 you submit them to?

22 A. I submit -- at the time it is submitted
23 electronically.

24 Q. Right.

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1 A. So it was approved by Dr. Jain when he was
2 the director of the clinic. And now, it's approved by
3 Dr. Weisman.

4 Q. Dr. Weisman, is he the director of all the
5 clinics?

6 A. She is the director --

7 Q. She.

8 A. -- of all the clinics, yes.

9 Q. Okay. I'm sorry.

10 And to your knowledge, were any of the other
11 directors -- first off, before I go into there, is your
12 lunch paid or unpaid?

13 A. Unpaid.

14 Q. And so you work a seven-hour workday; am I
15 right?

16 A. Correct.

17 Q. Okay. And as far as you know, do the other
18 court clinic directors work a seven-hour workday?

19 A. I don't know what they work.

20 Q. Okay. To your knowledge, did any of the
21 other directors have to change -- did any of the other
22 directors have a shift change?

23 A. At any time or around the time of Dr. Kaye's
24 or --

1 Q. Around the time of Dr. Kaye's. Let's start
2 with that.

3 A. Not that I'm aware of.

4 Q. Okay. Subsequent to Dr. Kaye's shift change?

5 A. Not as far as I know, but that's not
6 something I would be aware of.

7 Q. Now, what was your salary when you became
8 director of the Brooklyn Court Clinic?

9 A. 118,000.

10 Q. And is that your salary today?

11 A. Yes, it is.

12 Q. Okay. Now, are there any restrictions on
13 your salary based on your retirement from the South
14 Hampton Police Department?

15 A. No.

16 MS. CANFIELD: Objection to form. You can
17 answer.

18 Q. You said no?

19 A. No.

20 Q. Now, to be clear -- do you -- let me make
21 sure I get this clear. Are you an H&H employee?

22 A. I'm a CHS employee. I am paid by Physician's
23 Affiliate Group of New York, PAGNY, P-A-G-N-Y. Because
24 of -- because I receive a pension from the state already

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1 as a retired police officer, under Civil Service Law,
2 until age 65, if you are back to work for a public
3 benefit corporation, municipality, et cetera, you have
4 to receive -- you have to get a waiver from civil
5 service in order to continue to collect your full
6 pension. But if you work for a private company, which
7 in essence, PAGNY is, then you do not need the waiver.

8 Q. So did you ever obtain a waiver at any time
9 since you worked for either Bellevue or CHS?

10 MS. CANFIELD: Objection to form. You can
11 answer.

12 A. When I first worked for Bellevue, I applied
13 for the waiver, and it was a very complicated process.
14 I had to get in touch, from what I remember, with
15 someone in HR about it, and there was not an initial
16 determination made at that point. And then, around that
17 time, I asked Dr. Elliot, who was my supervisor or my
18 psychology department supervisor, if I could be switched
19 to an NYU line, since that was a private company,
20 private hospital, and would no longer need -- no longer
21 need the waiver. And that took a number of months, but
22 I was eventually changed to an NYU line. And for the
23 remainder of the time that I worked for Bellevue, I was
24 a Bellevue employee who was paid by NYU.

1 Q. And when did that take place?

2 A. The changeover to NYU?

3 Q. Yes.

4 A. I think it was somewhere around 2009 or '10,
5 I believe. It was early on in my time at the Bronx
6 Court Clinic.

7 Q. So when you took the position as Brooklyn
8 director, did you seek to have that same arrangement, so
9 you wouldn't have to deal with the waiver issue?

10 A. Originally what happened was, I was going to
11 be hired by CHS. And then I was -- and I was -- I made
12 them aware of the fact that I would need the waiver.
13 And then they offered me the option of being paid by
14 PAGNY, in which case I would not need the waiver. And
15 then I decided to take the PAGNY pay line.

16 Q. Who offered you the option to be paid by
17 PAGNY?

18 A. It was brought to my attention by Elizabeth
19 Ford, and then it was finalized by the HR department.

20 Q. And HR department consists of who? Is it Ms.
21 Laboy?

22 A. I think it might have been. I don't remember
23 their names.

24 Q. Okay. Okay. So I have some questions about

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1 the, I guess, the work group. During the time in
2 engaging in work group and being involved in the work
3 group, what were some of the topics that were discussed?

4 MS. CANFIELD: Objection to form. You can
5 answer.

6 A. There were a number of things that were
7 discussed. I recall this idea of some standardization,
8 not complete standardization, but increased
9 standardization of our reports from the clinics, various
10 procedures, report content. I think that idea of the
11 releases -- having defendants sign releases, I think
12 that was floated. There were a lot of ideas floated. I
13 believe there was a -- I believe there was an outline of
14 a sample report, headings that were floated at one
15 point. There were a lot of things that were brought up
16 and discussed as potential ideas during those work
17 groups.

18 Q. Okay. Now, I want to also kind of make sure
19 that I got everything as far as Dr. Elliot was
20 concerned. Did Dr. Elliot ever complain to you about
21 Dr. Kaye?

22 A. No.

23 Q. Okay. Did anyone ever complain to you about
24 Dr. Kaye?

1 A. Not that I can recall.

2 Q. Now, had you ever made the -- I guess -- let
3 me backtrack.

4 What would you say the workload at the Bronx
5 Court Clinic was like when you worked there?

6 A. Do you mean number of cases we saw per year,
7 or how would you want me to quantify that?

8 Q. Well, let's start with the number of cases
9 you saw.

10 A. Well, it obviously would vary year to year,
11 but I believe we averaged 200, two and a quarter -- 225
12 rather, 730 evaluations per year. I think that was kind
13 of our average number each year that we saw.

14 Q. And how did that compare to, let's say, for
15 example, now that you're at the Brooklyn Court Clinic.
16 How does that compare with the Brooklyn Court Clinic?

17 A. I think Brooklyn is busier, but we have more
18 clinicians in Brooklyn.

19 Q. So how many 730s would Brooklyn see?

20 A. I honestly don't know how many we're seeing
21 annually. I don't know. Off the top of my head, I
22 don't know.

23 Q. Now, when you and Dr. Kaye worked at the
24 court clinic together, were you adequately staffed?

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1 A. What do you mean by adequately staffed?

2 Q. Well, could the Bronx Court Clinic had used
3 more clinicians?

4 A. I think there were times where we were busy,
5 and we could have used another clinician. I believe --
6 I think before I came to the court clinic in the Bronx,
7 there had been maybe an additional part-time clinician
8 there, I'm not sure, besides the two full-time. There
9 were times it would ebb and flow, frankly. But there
10 were times we could have used an additional clinician.

11 Q. Would you say that there were staffing issues
12 at the Bronx Court Clinic during your time there?

13 A. Staffing issues is broad. I would just
14 revert back to where I think there were times we could
15 have used another clinician. But again, it ebbs and
16 flows.

17 Q. Would you -- would you say that it was
18 difficult to retain staff at the Bronx Court Clinic
19 while Dr. Kaye was there?

20 MS. CANFIELD: Objection to form. You can
21 answer.

22 A. Do you mean while I was employed there?

23 Q. Right. Like, did you see -- was there ever
24 an attempt made to hire another clinician or -- another

1 clinician at the clinic?

2 A. Not that I recall.

3 Q. Okay. And did you ever hear any discussion
4 about it being difficult to retain staff at the Bronx
5 Court Clinic?

6 A. Not while I was there.

7 Q. After, did you hear any complaints about or
8 any discussions about it being difficult to attract or
9 retain staff at the Bronx Court Clinic?

10 A. I do recall hearing something to that effect,
11 yes, after I left.

12 Q. So what did you hear?

13 A. I forget where I heard it. I might have
14 heard it from Dr. Jain. I don't recall how specific it
15 was, other than they were having difficulty hiring
16 someone to go there.

17 Q. Okay. What did Dr. Jain say to you exactly?

18 A. I don't remember exactly what he said. It
19 would have been similar to what I just said, we're
20 having difficulty hiring someone to go there.

21 Q. Did he tell you why?

22 A. I don't recall him being specific. I just
23 recall him saying they were having trouble getting
24 someone to fill a position.

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1 Q. Did anyone that you worked with express a
2 reluctance to go to the Bronx Court Clinic to work with
3 Dr. Kaye?

4 A. You mean in my -- in the Brooklyn Clinic.

5 Q. Anywhere. I mean, I would think that you all
6 -- I mean, the clinicians and even the staff interacted
7 with each other. Was there any banter or discussion
8 about going to work with Dr. Kaye in the court clinic
9 when there -- when there was a need?

10 A. Well, no, because we didn't -- we would have
11 gone -- in the very beginning --

12 MS. HAGAN: You're breaking up. I can't hear
13 you at all.

14 THE WITNESS: Can you hear me now?

15 MS. HAGAN: Yes.

16 Q. You said no, and then what happened?

17 A. The only time we would have or went to the
18 Bronx Clinic was in the beginning -- there was a point
19 where they didn't have additional staff or enough staff
20 in the Bronx. And I know I went up one time, at least
21 once, maybe twice, to cover a case. And I think a
22 couple of -- maybe one other time, one of our clinicians
23 went. The only reluctance I ever heard about going
24 there was that they just simply didn't want to have to

1 go up to the Bronx, the physical location.

2 Q. So it was the location, not Dr. Kaye?

3 A. Correct.

4 Q. Now, at any point, were you aware of a work
5 stoppage in the Bronx Court Clinic?

6 MS. CANFIELD: Objection as to form.

7 A. A work stoppage, no.

8 Q. Okay. So let's -- let's backtrack some.

9 At some point, Dr. Brayton was hired. Do you
10 remember that?

11 A. Yes.

12 Q. Now, did you participate in the decision or
13 the process of hiring Dr. Brayton?

14 A. I was part of the interview. Dr. Jain and I
15 interviewed her.

16 Q. Did Kaye -- did Dr. Kaye interview Dr.
17 Brayton?

18 A. I believe she did.

19 Q. Was she with you when she interviewed Dr.
20 Brayton?

21 A. No.

22 Q. Okay. Now, do you recall when Dr. Brayton
23 started with -- started with CHS?

24 A. I think maybe it was the end of -- towards

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1 the end of 2018. I'm not entirely sure.

2 Q. And so you and Dr. Jain interviewed Dr.
3 Brayton, and this is the end of -- did you say
4 something?

5 A. No.

6 Q. Okay. And this is the end of 2018. Now, you
7 left the clinic in April of 2018; is that right?

8 A. Yes.

9 Q. So from April 2018 to the end of 2018, was
10 Dr. Kaye the only full-time staff person at the Bronx
11 Court Clinic -- I guess, the only full-time clinician at
12 the Bronx Court Clinic?

13 A. As far as I know, she was.

14 Q. Okay. At any point, did Dr. Ford represent
15 to you that she wouldn't actually designate you as
16 director of the Brooklyn Court Clinic until a
17 replacement had been named for you?

18 A. No, I don't recall that at all.

19 Q. Okay. So you ended up being, you know,
20 promoted to the director position in Brooklyn Court
21 Clinic. But there hadn't been any coverage put in place
22 upon your departure; am I right?

23 MS. CANFIELD: Objection to form. You can
24 answer.

1 A. As far as I know, I don't recall what plans
2 were made for coverage, but they hadn't -- when I left
3 to go to Brooklyn, they hadn't hired anybody to take my
4 place.

5 Q. Okay. And then did Dr. Kaye ever speak to
6 you about the lack of coverage between April of 2018 and
7 when Dr. Brayton was hired?

8 A. I think I seem to recall some conversation
9 about lack of coverage. I don't really remember
10 specifics, but I seem to remember her saying that she
11 was having difficulty with coverage.

12 Q. How -- between April 2018 and the end of
13 2018, how often would you say you were, I guess,
14 requested to go to the Bronx Court Clinic to fill in
15 when there were issues with coverage?

16 MS. CANFIELD: Objection to form. You can
17 answer.

18 A. I think I was asked to go -- as far as I
19 recall, I was asked to go twice.

20 Q. Now, twice during that period from April 2018
21 to when Dr. Brayton was actually hired?

22 MS. CANFIELD: Objection to form. You can
23 answer.

24 A. Twice at any point. I think I only went to

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1 the Bronx twice, maybe three times. I don't recall, but
2 it wouldn't have been any more than that at any point
3 after I left.

4 Q. Now, Dr. Brayton was eventually hired. Did
5 you train Dr. Brayton initially?

6 A. She -- yes -- well, she spent time in our
7 clinic. I think it was about three months. She saw
8 cases, and I supervised her reports. I don't recall if
9 I supervised every one of her reports or some of the
10 other doctors contributed. But yes, I did contribute to
11 her training.

12 Q. Why was -- was she physically located in the
13 Brooklyn Court Clinic at that time?

14 A. She would come to the clinic to see the
15 cases, yes.

16 Q. But she didn't report to the Bronx Court
17 Clinic when you were training her; am I right?

18 MS. CANFIELD: Objection to form. You can
19 answer.

20 A. Not as far as I know.

21 Q. So she was reporting every day to the
22 Brooklyn Court Clinic during the period in which you
23 were training her; am I right?

24 A. I think so, yes.

1 Q. Why was the decision made that you would
2 provide Dr. Brayton the training?

3 MS. CANFIELD: Objection to form. You can
4 answer.

5 A. I think it was that there were a couple of
6 reasons. Since Dr. Kaye would be her co-examiner on --
7 on cases if she were to try to train in the Bronx, a
8 co-examiner would not supervise the other examiner's
9 reports. Plus I had -- I don't know if this was a
10 factor, but I've had a lot of experience training
11 interns, et cetera. I have a feeling it was more the
12 co-examiner issue, and that's why she came to Brooklyn.

13 Q. Who made the decision that you would train
14 Dr. Brayton rather than Dr. Kaye?

15 A. I believe it was Dr. Jain.

16 Q. And when Dr. Brayton was hired, do you
17 believe that she was qualified to do the 730
18 examinations at the time?

19 MS. CANFIELD: Objection to form. You can
20 answer.

21 A. When you say "qualified," what do you mean?

22 Q. Well, did she have any forensic psychiatric
23 experience in the context of a penological institution?

24 A. I forget what -- I forget about her CV, what

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1 placement she had, but I know she came from family court
2 where she had been doing evaluations for the family
3 court system. They are different evaluations. I did
4 have a question of how well her skills would translate
5 to doing adult criminal defendant evaluations.

6 Q. And did they translate?

7 A. I think they did. My primary issue with Dr.
8 Brayton was the -- the length of her reports and the
9 excessive detail.

10 Q. Okay. So how long were her reports?

11 A. It varied, depending on the case. But in my
12 opinion, they typically included too much detail and
13 were difficult to follow sometimes.

14 Q. You said they were difficult to follow?

15 A. Sometimes.

16 Q. And you said they were also, at times, too
17 long; right?

18 A. In my opinion.

19 Q. And would there be a consistency with what
20 Dr. Brayton would write in the body of her reports and
21 the outcome that she reached?

22 MS. CANFIELD: Objection to form.

23 A. Was there -- say that again.

24 Q. Were there times where what -- what she wrote

1 in the body of her reports were inconsistent with the
2 outcomes that she would each as far as whether or not
3 the defendant was fit to stand trial?

4 A. Yes, I think that did happen.

5 Q. Now, were there times, for example -- like
6 scratch that.

7 Dr. Kaye -- let's say Dr. Brayton was hired,
8 let's say, in the fall of 2018; would you give me that?

9 MS. CANFIELD: Objection to form. You can
10 answer.

11 A. I don't know if that's accurate as to my
12 recollection.

13 Q. Right.

14 MS. CANFIELD: Is there something you can
15 show him to refresh his recollection?

16 Q. Now, Dr. Brayton, you said was -- you trained
17 her for three months; is that right?

18 A. I think it was about three months. That's my
19 recollection.

20 Q. Was that the original amount of time that you
21 anticipated training her?

22 MS. CANFIELD: Objection to form. You can
23 answer.

24 A. I think we kept her longer than we initially

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1 planned.

2 Q. Okay. Why was that?

3 A. My recollection is -- was because she was
4 having difficulty with her reports.

5 Q. And what difficulty was she having
6 specifically?

7 A. The thing I mentioned earlier, writing
8 concisely, writing too much, in my opinion, clearly
9 conveying the information.

10 Q. Did Dr. Jain feel the same way as you did
11 about Dr. Brayton's reports?

12 MS. CANFIELD: Objection to form. You can
13 answer, if you're able.

14 A. I -- I believe he did. I seem to recall a
15 discussion where he had read one or however many of her
16 reports, and had the similar feeling as me at some point
17 in her training.

18 Q. Who made the determination to extend her
19 training, I guess, time period with you?

20 A. I was definitely part of that decision
21 process. I seem to remember conveying it to Dr. Jain.
22 And I actually recall having a conversation or exchange
23 with Dr. Kaye, I believe about it, saying that I wasn't
24 sure she was ready to go yet, that she needed work on

1 her reports.

2 Q. Now, during that time while Dr. Brayton was
3 getting trained, how was the -- how was Dr. Kaye dealing
4 with the workload at the Bronx Court Clinic? Did she
5 convey that to you?

6 MS. CANFIELD: Objection to form. You can
7 answer.

8 A. I don't recall if that was the time. That
9 might have been the time they had hired a per diem
10 psychiatrist to work there. I'm not sure if it was that
11 timeframe.

12 Q. Would that have been Dr. Mullan?

13 A. I know that Dr. Mullan was hired to work
14 there. I -- I don't know if it was during that time
15 frame, but it could have been.

16 Q. Okay. Now, do you recall anything
17 surrounding the Jose Gonzalez case?

18 MS. CANFIELD: Objection to form. You can
19 answer.

20 A. I recall that case.

21 Q. Okay. So let's start. Now, you and Dr. Kaye
22 originally evaluated Mr. Gonzalez; is that right?

23 A. Yes.

24 Q. And what happened during that time?

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1 MS. CANFIELD: Objection to form. You can
2 answer.

3 A. Do you mean how -- what finding did we come
4 to or --

5 Q. Let's start with the examination itself. Do
6 you recall the examination?

7 A. I do recall part of it, yes.

8 Q. Okay. What do you remember?

9 A. I remember how he presented during the
10 interview.

11 Q. And how did -- how did he present, Dr.
12 Winkler?

13 A. To me, he presented as psychotic.

14 Q. He was psychotic?

15 A. That's what I thought.

16 Q. Okay. And did Dr. Kaye agree with you at
17 that time; do you remember?

18 A. Yes, she did.

19 Q. And did anyone from CHS have a different
20 opinion about Mr. Gonzalez?

21 MS. CANFIELD: Objection as to form. You can
22 answer.

23 A. I don't remember CHS -- anybody from CHS
24 being involved with it. I know we saw him twice. There

1 was a -- after we saw him the first time, Dr. Kaye and I
2 found him or opined that he was unfit. And then defense
3 counsel hired a private evaluator to do an examination.
4 That evaluator opined that he was fit. And then he was
5 ordered back to us, and we saw him a second time. And
6 we opined he was fit again -- I'm sorry, he was unfit
7 again. Excuse me. And after that, we had a hearing on
8 the case before the judge.

9 Q. Is this a controversion hearing; right?

10 A. Correct.

11 Q. And I guess, just for purposes of clarity, I
12 guess I just wanted to make sure I was right. Now, did
13 the ADA hire the expert or defense counsel?

14 MS. CANFIELD: Objection to form. You can
15 answer.

16 A. It was the ADA. You're right. I made a
17 mistake, it was the defense counsel. Because we
18 determined -- we opined they were unfit. The DA's
19 office hired the expert.

20 Q. And if you recall, was the expert doctor Dr.
21 Charter?

22 A. Yes.

23 Q. Now, during the controversion hearing, at
24 some point, did the judge ask you what you relied upon

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1 in making your determination that Mr. Gonzalez was
2 unfit?

3 A. I believe the DA asked me, defendant's
4 counsel may have asked me on direct also.

5 Q. Was there -- was there an instance where
6 there was a discussion about the recordings -- the
7 prison recordings and whether or not you listened to the
8 same recordings as, perhaps, the other evaluators to
9 come up with -- to make your determination?

10 MS. CANFIELD: Objection as to form.

11 Recordings. Did we determine that there were
12 recordings? Go ahead, answer.

13 A. I think you're referring to the recorded
14 telephone conversations from Rikers Island by the
15 defendant?

16 Q. Exactly, yes.

17 A. Yes. There were a number of -- we received
18 quite a bit of information, actually from the DA's
19 office, which included both recordings and transcripts
20 of recordings of telephone calls that the defendant had
21 made while he was in Rikers Island to family members.
22 So there was a question of what I reviewed in my
23 evaluation.

24 Q. Right. And ultimately, the judge ordered a

1 third set of examiners; am I right?

2 A. That's correct.

3 Q. And the third set of examiners were who?

4 A. I believe it was Dr. Mullan and, I think, Dr.
5 Brayton.

6 Q. Okay. And at that time, Dr. Brayton was
7 still fairly new at CHS; is that right?

8 MS. CANFIELD: Objection to form. You can
9 answer.

10 A. Yeah. I don't recall exactly when their
11 evaluation took place, but I think it's fair to say she
12 was fairly new at the time.

13 Q. Were you concerned about Dr. Brayton's
14 assessment of -- of Mr. Gonzalez?

15 A. I wasn't necessarily concerned, because in my
16 opinion, I felt that he was clearly psychotic. And I
17 thought -- at least at the time I saw him. And I felt
18 that if he continued to be as psychotic as he was, in my
19 opinion when I saw him, that neither she or Dr. Mullan
20 would have any problems seeing that.

21 Q. Now, during the course of your examination of
22 Dr. -- I keep wanting to call him doctor --
23 Mr. Gonzalez, did you administer any psychological test?

24 A. Yes, I did.

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1 Q. So explain to me, you know, how do they come
2 into play, psychological tests?

3 A. They come into play in different questions,
4 different situations. In this particular situation,
5 after Dr. Kaye and I did our initial evaluation, Dr.
6 Charter, when she did her evaluation, she administered a
7 psychological measure designed to assess for malingering
8 of psychosis. And in my opinion, when I reviewed her
9 interview and her evaluation, which had been recorded by
10 the DA's office, I felt that she had not administered it
11 appropriately, properly. I therefore, chose to
12 administer my own measure of potential malingering. And
13 I believe I gave him something called TOMM. But the
14 measures I gave did not, in fact, show that he was
15 malingering.

16 Q. At any point, did anyone determine that you
17 had not administered the psychological test correctly?

18 A. Not as far as I know.

19 Q. So that determination was never made.

20 Did you administer the SIRS or the PIA test?

21 MS. CANFIELD: Objection to form. You can
22 answer.

23 A. I think -- I know Dr. Charter did the SIRS.

24 I -- I might have given him the SIRS again. And I think

1 I -- I think I gave him the PAI also. I don't remember
2 exactly, but I think I did give him both of those.

3 Q. I'm going to ask you, Dr. Winkler, are these
4 -- sometimes are these tests administered in a staggered
5 way? Like for example, one test -- if you administer
6 one test and it doesn't -- and you determine based on
7 that test, the other test may not be necessary, or it
8 would necessitate the other test subsequent thereto?

9 MS. CANFIELD: Objection to form. You can
10 answer.

11 A. Do you mean like one might be like kind of
12 screening type of thing?

13 Q. Right. Exactly.

14 A. Well, depending on the situation, that might
15 happen. Depending on the question you have about a
16 defendant's capabilities or any independent patient,
17 whatever, that you're testing, you might issue a
18 screening measure and then decide whether to issue
19 something additional or not.

20 Q. And did you -- did you engage in the
21 screening measure first with doctor -- Mr. Gonzalez?

22 A. If I remember correctly, I think I gave him
23 something called a TOMM, which is an effort -- a measure
24 of effort motivation, which is typically given prior to

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1 other tests, because based on the individual's
2 performance, you can extrapolate if you -- if the
3 results show that they gave full effort on that first
4 measure. You can then extrapolate and assume that they
5 gave full measure on the other -- full effort, rather,
6 on the other measures that you give. I think I gave it
7 to him. I don't remember if I did or not exactly
8 though.

9 Q. At any point, was it ever conveyed to you
10 that CHS management or anyone else wanted to find
11 Mr. Gonzalez fit?

12 MS. CANFIELD: Objection to form. Asked and
13 answered. You can answer again.

14 A. Not that I recall.

15 Q. Now, this was the EMT killer; am I right?

16 MS. CANFIELD: Objection to form. You can
17 answer.

18 A. He was accused of killing an EMT, yes.

19 Q. Was he convicted; do you know?

20 A. I don't know.

21 Q. Okay. Now, he was accused of killing an
22 EMT -- I guess EMT driver; right?

23 A. Right.

24 MS. CANFIELD: Objection to form. You can

1 answer.

2 Q. Right. And so the case had a fair amount of
3 publicity; am I right?

4 A. Yes, I believe it did.

5 Q. Did anyone from CHS management talk to you
6 about the case?

7 MS. CANFIELD: Objection to form. You can
8 answer.

9 A. Not that I recall.

10 Q. Okay. So then, Dr. -- Dr. Brayton and Dr.
11 Mullan basically conducted a third set of examinations;
12 is that right?

13 MS. CANFIELD: Objection to form. Asked and
14 answered. You can answer it again.

15 A. Yes, they did.

16 Q. And in that instance, did the judge insist
17 upon them examining doctor -- Mr. Gonzalez separately?

18 MS. CANFIELD: Objection to form. You can
19 answer.

20 A. I think they did -- I think the judge did,
21 yes, direct that.

22 Q. And is that common?

23 A. No, it's not.

24 Q. In all the time that you have been engaging

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1 or doing 730 examinations, had you ever been ordered to
2 conduct the examination separate from the other
3 examiner?

4 A. No.

5 Q. Okay. When you learned the judge required
6 that the examinations be done, you know, by Dr. Brayton
7 and Dr. Mullan separately, what did you -- what did you
8 think?

9 A. I don't think split examinations are ever a
10 good idea.

11 Q. Why is that?

12 A. Several reasons. You -- you run the risk of
13 a defendant being cooperative with one examiner and not
14 cooperative with another examiner. Different defendants
15 present differently on different days. Somebody who's
16 malingering may choose to malingering with one examiner and
17 not another. I feel it's always better to do exams with
18 the other examiner. Both examiners see the same thing
19 at the same time.

20 Q. At any point -- I mean, did you raise
21 concerns or did you discuss your feelings about the
22 separate examination order?

23 A. I think Dr. Kaye and I discussed it. I don't
24 think Dr. Kaye felt it was a good idea either.

1 Q. Okay. And how -- did you ever read or review
2 Dr. Brayton's examination?

3 A. Yes, I do recall reading it.

4 Q. And what do you remember?

5 A. If I remember, I believe there was quite a
6 bit of reference to his records, the defendant's
7 records. I remember she found him fit to proceed.

8 Q. Now, the -- keep going.

9 A. Go ahead. No, that's it. I'm done.

10 Q. You said that is her -- her report focused on
11 the records. Did she actually see Mr. Gonzalez?

12 MS. CANFIELD: Objection to form. You can
13 answer.

14 A. I believe she did. I didn't say it
15 necessarily focused on records. It included a lot of
16 information from records, as I recall. I don't -- I
17 honestly don't recall if she actually saw him. I don't
18 recall at this point.

19 Q. Do you recall if Dr. Mullan actually saw Jose
20 Gonzalez?

21 A. I don't recall. I know I did review her
22 report, but I don't recall.

23 Q. So you're not sure if either or -- you're not
24 sure if Dr. Mullan and/or Dr. Brayton wrote their

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1 reports only on the records or if they actually saw Mr.
2 Gonzalez; are you -- is that your testimony?

3 MS. CANFIELD: Objection to form. You can
4 answer.

5 A. I don't recall.

6 Q. Okay. Now, do you recall if Dr. Brayton
7 administered any psychological test?

8 A. I don't think she did. I don't remember
9 seeing any. But I don't recall seeing any in her
10 report.

11 Q. At any point -- so I guess I'm going to ask
12 you. Did Dr. Mullan find that Mr. Gonzalez was
13 malingering?

14 A. Yes.

15 Q. And did Dr. Brayton determine that
16 Mr. Gonzalez was malingering?

17 A. I don't recall Dr. Brayton thinking he was
18 malingering or saying that in her report.

19 Q. But she did find him fit though; right?

20 A. She found him fit.

21 Q. Okay. Now, at any point, did you express any
22 disdain, or -- I'm not sure if disdain is the right
23 word. Had you ever said that Dr. Mullan had a tendency
24 to over diagnose defendants' malingering?

1 MS. CANFIELD: Objection to form. You can
2 answer.

3 A. I don't recall -- I don't recall saying that
4 Dr. Mullan had an over tendency to diagnose malingering,
5 but I did express disagreement with the opinion that Mr.
6 Gonzalez was malingering.

7 Q. Okay. Yeah. So at any point, was Dr.
8 Brayton, quote, unquote, remediated?

9 MS. CANFIELD: Objection to form. You can
10 answer.

11 A. I know she underwent some additional
12 training.

13 Q. When was that?

14 A. I -- I don't remember.

15 Q. Was this toward the end of her tenure or in
16 the middle?

17 MS. CANFIELD: Objection to form. Or in the
18 beginning?

19 A. I -- I want to say my recollection is maybe
20 the middle towards the end.

21 Q. And what precipitated her getting this
22 additional training?

23 A. I'm not sure. I think -- think Dr. Kaye had
24 concerns about her reports, but I'm not positive.

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1 Q. Was that only -- the only factor that led to
2 the decision to provide her with additional training?

3 MS. CANFIELD: Objection. You can answer.

4 A. I -- I don't know. I wasn't -- I really
5 wasn't intimately involved with that.

6 Q. Did you provide her with additional training?

7 A. I don't recall if she came -- if she did more
8 cases with us after that. I don't recall. She might
9 have seen more cases with us. I honestly don't
10 remember.

11 Q. Did Dr. Kaye convey to you that any judges or
12 other lawyers were complaining about Dr. Brayton's work?

13 A. Yes, she did say that to me.

14 Q. What exactly did she say?

15 A. I believe she referenced a judge saying that
16 -- I think she used the word "inconsistent." The judge
17 used the word "inconsistent" with regard to one of Dr.
18 Brayton's reports.

19 Q. What -- what other things did Dr. Kaye convey
20 to you about Dr. Brayton from these judges and/or, I
21 guess, lawyers?

22 MS. CANFIELD: Objection to form. You can
23 answer.

24 A. I remember there was a comment about the

1 inconsistent report that a judge had said, according to
2 Dr. Kaye. I know Dr. Kaye did not like Dr. Brayton's
3 interviews, did not like the way Dr. Brayton introduced
4 the interview. I remember her mentioning that. And I
5 think Dr. Kaye mentioned -- I forget if possibly a
6 lawyer from Legal Aid had complained about an interview
7 approach also.

8 Q. Was this lawyer Jeff Bloom?

9 A. I believe it might have been, yes.

10 Q. Did Lorraine McEvelley also complain about
11 Dr. Brayton?

12 MS. CANFIELD: Objection to form. You can --
13 you can answer.

14 A. I think, according to Dr. Kaye, yes, she
15 might have. I seem to recall that.

16 THE WITNESS: Can I just -- excuse me. Can I
17 get a bathroom break in a minute?

18 MS. HAGAN: Why don't we have a lunch break
19 instead. How long do you need, Dr. Winkler, for a
20 break for lunch and bathroom and whatever?

21 THE WITNESS: 30 minutes would be plenty.

22 MS. HAGAN: Does that work for you, Ms.
23 Canfield?

24 MS. CANFIELD: Yeah. I was going to say

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1 either 1:15 or 1:30. I don't know. We should
2 probably ask the court reporter.

3 MS. HAGAN: Marci?

4 THE REPORTER: That's fine.

5 MS. HAGAN: Why don't we do 1:15.

6

7 (Luncheon recess taken.)

8

9 MS. HAGAN: Last question and answer, please.

10

11 (The requested testimony was read back.)

12

13 BY MS. HAGAN:

14 Q. I'm going to go back to the line of
15 questioning. I hope you don't mind me asking you these
16 things again, Dr. Winkler. Please bear with me.

17 So first I want to ask you, did Dr. Brayton
18 ever complain to you about Dr. Kaye?

19 A. Didn't complain directly about Dr. Kaye, per
20 se. She did complain about Dr. Kaye's comments about
21 her interview style. And that Dr. Brayton's interview
22 style. And that Dr. Brayton felt her interviews were
23 conducted the way she had to do them.

24 Q. Okay. Now, what did Dr. Brayton say that Dr.

1 Kaye told her about her interview style?

2 A. I don't remember specifics other than the
3 things I mentioned earlier, that Dr. Brayton had a
4 certain way of introducing evaluation that I don't think
5 Dr. Kaye did, asking a lot of extraneous questions, in
6 Dr. Kaye's opinion. So she was just not happy with the
7 fact that her interviews were being criticized.

8 Q. And did Dr. Brayton ever say she didn't want
9 to work with Dr. Kaye?

10 A. What she told me is that she did not want to
11 work in the Bronx anymore. She never directly say I
12 don't want to work with Dr. Kaye.

13 Q. Did she tell you why she didn't want to work
14 in the Bronx anymore?

15 A. She didn't say specifically. I think it
16 revolves around, again, questions about her procedures,
17 her interview procedures, and possibly her reports.
18 When she got offered another job, that was in essence a
19 promotion, I believe somewhere else. So she decided to
20 leave.

21 Q. She decided to do what?

22 A. To leave and take the other job.

23 Q. Now, did you agree with the questions that
24 Dr. Kaye raised about Dr. Brayton's report?

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1 MS. CANFIELD: Objection to form. You can
2 answer.

3 A. I had my opinions about Dr. Brayton's
4 reports. I think I've mentioned earlier that I felt
5 they were too long, and at times, were not always clear
6 which was why she was headed with her opinion.

7 Q. Now, was there a time -- I guess, you know, I
8 had to learn a little bit about forensic psychiatry in
9 the course of this litigation. I was under the
10 impression that the Dusky case kind of lays out the
11 types of questions or the types of topics that should be
12 covered during the course of a forensic evaluation; is
13 that -- is that true?

14 MS. CANFIELD: Objection to the form. You
15 can answer.

16 A. I didn't hear. What did you say, "lays it
17 down" in the beginning?

18 Q. Dusky -- the Dusky decision.

19 A. Dusky guides -- Dusky provides the overview
20 of what we need to determine -- to evaluate to determine
21 if someone is fit to proceed. The questions that
22 different doctors ask, they -- some of them have their
23 own way about asking questions to arrive at their
24 determination as to whether someone meets the Dusky

1 standard for fitness.

2 Q. Now, was there ever a complaint -- was there
3 ever a complaint of concern raised about Dr. Brayton
4 using a list to engage or to conduct her interviews?

5 MS. CANFIELD: Objection as to form. You can
6 answer.

7 A. I seem to remember -- I remember Dr. Kaye
8 mentioning somebody about that. I forget if Dr. Brayton
9 was using that when she was doing interviews in
10 Brooklyn. But I remember Dr. Kaye mentioning that Dr.
11 Brayton had a very extensive interview form. A lot of
12 the evaluators use a form to record their notes on. But
13 I remember Dr. Kaye mentioning that Dr. Brayton had a
14 very comprehensive interview form with a number of
15 questions that Dr. Kaye felt were unnecessary.

16 Q. Now, for purposes of doctor -- of
17 understanding some of the reasons why Dr. Brayton would
18 not have wanted to work in the Bronx, did you ever learn
19 where Dr. Brayton lived while she was working there at
20 the Brooklyn Court Clinic?

21 MS. CANFIELD: Objection to form. You can
22 answer.

23 A. I believe Dr. Brayton lived in Brooklyn.

24 Q. Right. And you were located -- at least your

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1 clinic at the time, and still is, is located in
2 Brooklyn; am I right?

3 A. That's correct.

4 Q. Okay. And then wouldn't the commute be
5 longer to the Bronx than it would be to Brooklyn?

6 MS. CANFIELD: Objection to form. You can
7 answer.

8 A. Yeah. I guess depending on what part of
9 Brooklyn, but I would say that's a reasonable
10 assumption. It would take longer to get to the Bronx.

11 Q. And did Dr. Brayton ever complain about her
12 commute to the Bronx?

13 A. I don't recall whether she did or not.

14 Q. Did Dr. Brayton ever say that the Bronx Court
15 Clinic was adversarial?

16 MS. CANFIELD: Objection to form. You can
17 answer.

18 A. I don't remember her using the word
19 "adversarial."

20 Q. Did she ever describe the environment in the
21 Bronx in a negative way?

22 A. I'll preface it by saying I did not have a
23 lot of contact with her after she went there. But the
24 only negative comment would be what I referenced already

1 about how she didn't like the comments about her
2 interviewing and just didn't want to work in the Bronx
3 anymore.

4 Q. At any point, did she say that Dr. Kaye would
5 not answer her questions or engage her?

6 A. I do recall her saying something to the
7 effect of not -- Dr. Kaye not answering some of her
8 questions, I believe.

9 Q. Do you recall if it involved the Jose
10 Gonzalez case specifically?

11 A. I don't recall.

12 MS. CANFIELD: Objection to form.

13 A. I don't recall that.

14 Q. So you're not sure if -- you're not sure if
15 -- you're not sure about the context, and you're not
16 sure if there was a reason behind, maybe, Dr. Kaye
17 allegedly not engaging or talking to Dr. Brayton about a
18 given topic; would that be accurate?

19 MS. CANFIELD: Objection to form. You can
20 answer.

21 A. I don't know any details about why she may
22 not have spoken to her.

23 Q. Now, at any point, did there -- did there
24 ever come a time when there was discussion about the

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1 reporting of Dr. -- of Mr. Gonzalez's exam?

2 MS. CANFIELD: What was the question? I'm
3 sorry.

4 Q. Was there -- were you ever contacted by the
5 Office of Corporate Compliance about the recording of
6 Mr. Gonzalez's exam?

7 A. I was not contacted by the office of
8 corporate compliance, but I did become aware of the fact
9 that Mr. Gonzalez's exam was recorded.

10 Q. When did you become aware?

11 A. I knew when Dr. Kaye did it.

12 Q. Oh, so you knew. So how did you know?

13 A. I was there. She told me afterwards that she
14 had recorded it.

15 Q. And did you have a problem with that?

16 A. I -- I didn't have a problem with it. It
17 didn't violate any rules that I was aware of. At the
18 time, we generally did not record evaluations as a
19 standard practice, but I -- Mr. Gonzalez was an
20 extremely difficult defendant to capture everything he
21 said at times. So I understand why Dr. Kaye would feel
22 the need to record it.

23 Q. Did you know Dr. Kaye to record any other
24 exams?

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1 A. No. I think that's the only one I ever knew
2 of.

3 Q. Okay. And you said it wasn't a standard
4 practice. Was it something that you -- that you
5 determined it wasn't a standard practice on your own or
6 just from your experience there at the clinic?

7 MS. CANFIELD: Objection to form. He can
8 answer.

9 A. Do you mean -- I'm sorry. Can you rephrase
10 it?

11 Q. Was there like an unwritten policy against
12 recording exams in place at the clinics?

13 A. It was -- I don't know if I would say it was
14 an unwritten policy, but it was something that we -- if
15 it was ever mandated. At one point, I forget when it
16 was, there was some talk maybe in the DA's office that
17 they wanted to record evaluations at some point. And we
18 felt that if it became a mandated policy, it would
19 create a lot of problems in terms of maintenance of the
20 equipment, storage of the recordings, et cetera. So we
21 were more concerned about it, from my recollection,
22 becoming something they were going to make us do.

23 Q. Did CHS or HAC have a policy regarding
24 recording forensic exams in place at the time the Jose

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1 Gonzalez was allegedly recorded?

2 A. Not to my knowledge.

3 Q. And did you listen to Dr. Kaye's recording
4 when you wrote any of your reports yourself?

5 A. No.

6 Q. Were you familiar with the AAPL literature on
7 recording exams?

8 A. Yeah, I am familiar with it. I believe it's
9 -- I believe it says it's okay in certain situations.
10 I'm not a hundred percent sure.

11 Q. But there wasn't a blanket prohibition
12 against it; am I right?

13 A. Not as far as --

14 MS. CANFIELD: Objection to form.

15 A. Not -- as you know, there's no blanket
16 prohibition.

17 Q. Now. As far as the Office of Corporate
18 Compliance, were you aware that there was an
19 investigation, Dr. Winkler?

20 A. Of what?

21 Q. Regarding the Jose Gonzalez evaluation and
22 Dr. Kaye's recording of the exam.

23 A. I don't think I knew there was an
24 investigation. I knew, as I recall, once it -- it was

1 determined or found out or learned that she had recorded
2 it, I remember some people, I don't recall who it was,
3 there was discussion whether it was appropriate or not
4 to do it.

5 Q. You're not sure if -- I mean, there was a
6 discussion. But did anyone discuss it with you, Dr.
7 Winkler, whether or not it was appropriate for her to
8 record?

9 A. No, I don't remember them discussing it with
10 me as to whether it was appropriate or not.

11 Q. Did Ms. Patsos from corporate compliance, did
12 she approve you?

13 A. Not that the I recall.

14 Q. Okay. Did anyone from corporate compliance
15 approach you as to what happened with the Jose Gonzalez
16 evaluation?

17 A. Not that I remember.

18 Q. Okay. Did you ever tell anyone that CHS
19 didn't have a policy of recording exams?

20 A. Did I ever tell anyone that they didn't have
21 a policy of recording exams?

22 Q. Right. A policy or custom.

23 MS. CANFIELD: Objection to the form. You
24 can answer.

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1 A. I'm not sure I follow what you mean.

2 Q. Well, did you ever say to anyone, well, you
3 know, I don't think it's our practice to record exams
4 here at CHS?

5 MS. CANFIELD: Objection to the form. He can
6 answer.

7 A. I don't remember saying to anyone it's not
8 our practice here to record or exams. I don't know
9 whether I said we don't typically do it. I honestly
10 don't recall.

11 Q. Now, to your -- to your -- did Dr. Kaye, at
12 any time, tell you or talk to you about being written up
13 for recording the exam?

14 MS. CANFIELD: Objection to form. You can
15 answer.

16 A. I do remember her telling me that -- I forget
17 if she said she was written up. But I seem to remember
18 saying that she considered it a problem, I believe, that
19 she recorded it.

20 Q. And who did you understand the "they"
21 consisted of?

22 A. I think the CHS hierarchy.

23 Q. And when you say CHS hierarchy, who does that
24 entail?

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1 A. I assume it would be Dr. Jain or whoever was
2 above him at that point. I don't remember if Dr. Ford
3 was still there. I'm not sure.

4 Q. Dr. MacDonald, would that -- would he be a
5 part of that?

6 A. Yeah, he would be part of it.

7 MS. CANFIELD: Objection. Leading.

8 Q. And would Dr. Yang be considered part of the
9 hierarchy too?

10 A. Yes, I believe so.

11 Q. Okay. So do you recall the conversation that
12 you had with Dr. Kaye about this -- this incident?

13 MS. CANFIELD: Objection to form. You can
14 answer.

15 A. I don't recall the conversation. I recall,
16 at some point, hearing from her that it was a problem --
17 they thought it was a problem.

18 Q. Did you ever talk to her about how it was
19 resolved?

20 A. No, I don't think I ever did. If I did, I
21 don't remember.

22 Q. Now --

23 MS. CANFIELD: Wait. Wait everyone was
24 frozen. Was that question responded to?

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1 MS. HAGAN: He said I don't think I ever did.

2 MS. CANFIELD: Can you read back the question
3 and answer, because everyone was frozen except for
4 me there for a second.

5 MS. HAGAN: I asked Dr. Winkler, did he
6 recall learning from Dr. Kaye the outcome of the
7 investigation. And then Dr. Winkler said I don't
8 recall. I don't think I ever did. Is that
9 accurate, Dr. Winkler?

10 MS. CANFIELD: I think I missed the question
11 before that too. Can the court reporter read back
12 two questions. I missed it. It was frozen.

13 MS. HAGAN: No. I mean, we can have her go
14 back.

15 MS. CANFIELD: Yeah.

16 MS. HAGAN: Marci, can you read back the
17 record, please.

18
19 (The requested testimony was read back.)

20
21 Q. So we talked about -- you said you don't
22 recall having a conversation with Dr. Kaye about the
23 outcome or the resolution of the actual investigation
24 regarding her recording Jose Gonzalez; is that right?

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1 A. That's correct.

2 Q. Now, I wanted to, I guess, get your
3 viewpoint. Are the -- are the court clinics
4 HIPAA-exempt?

5 MS. CANFIELD: Objection to the form. Go
6 ahead.

7 A. We -- as far as I know, yes, the court
8 clinics are exempt.

9 Q. Can you elaborate on that so that the
10 record's clear exactly.

11 A. I believe there was a determination years
12 ago. I think Dr. Kaye may have had some paperwork to
13 this effect, a determination by someone, I forget who,
14 that said that the court clinics were HIPAA-exempt.

15 Q. So in that instance, the gave -- what do you
16 mean by HIPAA-exempt? Let me not lead you. What do you
17 mean by HIPAA-exempt in the court clinic
18 (indiscernible).

19 MS. CANFIELD: Objection to form. He can
20 answer.

21 A. That we do not come under the normal HIPAA
22 prohibitions about discussion -- a discussion of
23 personal information, medical information, history, et
24 cetera.

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1 Q. And I guess I was going to ask you in
2 general. Did you think that CHS adhered to the
3 separation between treatment and the evaluation aspect
4 of this operation as it pertained to the operation of
5 the clinic?

6 MS. CANFIELD: Objection to the form. You
7 can answer.

8 A. You mean if they kept the treatment and
9 evaluation sectors separate?

10 Q. Yes.

11 A. Yes, I feel that they did.

12 Q. Were there times where Dr. Kaye raised
13 concerns about the presence of Dr. Alex Garcia-Mansilla
14 and Dr. Brayton's evaluation?

15 A. I do recall an issue with that, yes. I
16 forget why Dr. Garcia-Mansilla was involved. I do
17 remember Dr. Kaye mentioning that, and thinking it was a
18 problem. I don't remember the details of why Dr.
19 Mansilla-Garcia was involved.

20 Q. Did you agree that Dr. Garcia-Mansilla being
21 involved in, I guess, sitting in on Dr. Brayton's
22 evaluation would be problematic?

23 MS. CANFIELD: Objection as to form. I don't
24 think any of this has been established that she

1 sat in, but go ahead, you an answer.

2 A. Well, yeah, I don't -- I don't recall what
3 involvement Dr. Garcia-Mansilla had with the case. I
4 don't -- I don't know what she did or didn't do, so I
5 really can't give an opinion.

6 Q. Do you recall a managing dual agency policy
7 being issued by CHS after Dr. Kaye raised this issue?

8 MS. CANFIELD: Objection, again, to
9 foundation. You can answer.

10 A. I don't recall if they issued it after that.

11 Q. Do you recall a policy to that effect
12 happening, a managing dual role policy?

13 MS. CANFIELD: Objection to form. You can
14 answer.

15 A. Yeah. I believe there is a managing dual
16 roles policy.

17 Q. Did you contribute to that policy?

18 A. I don't recall if I did. If I did in any
19 form, it would have been to review it and submit any
20 questions or changes. But I honestly don't recall if I
21 did contribute to it.

22 Q. I'm going to ask you some general questions
23 about Dr. Kaye and her communications with you about her
24 work environment at CHS after -- I guess during the time

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1 that Dr. Ford was back at CHS and onward.

2 So at any point once Dr. Ford and Dr. Yang
3 began to work at CHS, did Dr. Kaye complain to you about
4 her working conditions under them?

5 MS. CANFIELD: Objection to form. You can
6 answer.

7 A. She -- I think I've discussed the specific
8 complaint she made. She was unhappy about her change of
9 schedule. She was unhappy about her -- what she said
10 was her difference in pay. I don't recall other
11 complaints about the environment.

12 Q. Did she complain about the policies that were
13 being implemented by this new hierarchical structure?

14 MS. CANFIELD: Objection to form. You can
15 answer.

16 A. Can you give me an example of policy?

17 Q. For example, the -- the redacted medical
18 records; did she complain about that?

19 MS. CANFIELD: Objection to form. You can
20 answer.

21 A. That was not a -- the redacted medical
22 records wasn't a policy. It just happened, and we all
23 in the clinics complained about it. That wasn't
24 something that was a policy that we would get them. It

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1 was something that happened, and then we had to work to
2 get it corrected.

3 Q. Did CHS try to implement a form that
4 basically redacted HIV status information and substance
5 -- prior substance abuse history from the medical
6 record. Do you recall that?

7 MS. CANFIELD: Objection as to form. You can
8 answer.

9 A. I do recall -- yes, at one point, they had a
10 form. I think it was a proposed order form. We have an
11 order form that we have the judges sign for records.
12 And I believe it was a proposed form to use. It was
13 during the time where we were trying to settle the issue
14 of the redacted records. And it did not allow for HIV
15 or substance abuse information.

16 Q. At any point, did you encourage the removal
17 of redacted in the order so that it would facilitate the
18 process?

19 MS. CANFIELD: Objection to form. You can
20 answer.

21 A. You mean the form order that we used?

22 Q. Right. Yes.

23 A. I think, yes. I -- I think we added
24 non-redacted records to our order form. The words

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1 "non-redacted."

2 Q. I'm going to ask you something. You -- how
3 often did you say you engaged Dr. Kaye before you left
4 the center -- before you left the Bronx Court Clinic?

5 A. You mean spoke with her?

6 Q. Yes.

7 A. Every day.

8 Q. And did you all talk about, you know, her
9 working environment up -- up until that time?

10 MS. CANFIELD: Objection to form. You can
11 answer.

12 A. Specifically, we would discuss cases or
13 issues with cases, problems, if there was something like
14 the redacted records issue that was surfacing at the
15 time, we'd talk about that or issues scheduling
16 defendants or lawyers. There were always things that we
17 spoke about related to the clinic.

18 Q. Would you say that Dr. Kaye was enthusiastic
19 about her job generally?

20 A. Yes.

21 MS. CANFIELD: Objection to form. You can
22 answer.

23 A. I would say so.

24 Q. Now, when she complained to you about pay

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1 parity during that time, did her attitude towards the
2 job change?

3 MS. CANFIELD: Objection to form. You can
4 answer.

5 A. No. She was unhappy about that, but it
6 didn't change -- from what I recall, it didn't change
7 the way she approached her job.

8 Q. Did you think that Dr. Kaye was treated
9 unfairly in terms of pay, due to conversations and your
10 observations at the clinic?

11 MS. CANFIELD: Objection to form. You can
12 answer.

13 A. I don't know what her pay was, and I don't
14 know what the other doctor's pay was that she claims she
15 was paid less than. I don't have that information. If
16 what she told me was accurate and she was doing the same
17 job and getting paid less, then that would seem unfair
18 to me.

19 Q. Did you say as much to doctor Dr. Kaye during
20 the course of those conversations?

21 A. I believe I did.

22 Q. Okay. So then when the shift change took
23 place, you were at the Brooklyn Court Clinic; right?

24 A. Yes.

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1 MS. CANFIELD: Objection to form. Yes.

2 MS. HAGAN: Yes, he agreed.

3 Q. And did Dr. Kaye talk to you about the change
4 once she went to the Brooklyn Court Clinic?

5 MS. CANFIELD: Objection to form. You can
6 answer.

7 A. I remember her talking to me about it, yes.

8 Q. Now, you and Dr. Kaye were talking pretty
9 much regularly, even after you left the Bronx Court
10 Clinic; is that right?

11 MS. CANFIELD: Objection. Leading. You can
12 answer.

13 A. We talked clearly not as often, but after I
14 left, I think we would talk sometimes once a week or
15 every couple of weeks.

16 Q. But it was still a cordial relationship;
17 would I take it?

18 A. Yes, that's correct.

19 Q. And did Dr. Kaye, like, discuss the effects
20 that the shift change was having on her with you?

21 A. Yes.

22 Q. Okay. What did she say exactly?

23 A. Well, as I said earlier, she said that --
24 first she said that it was a violation of disagreement

1 with doctor's counsel, which I referenced earlier. And
2 she said that it was impacting her ability to care for
3 her son in the morning for the treatments that he
4 needed.

5 Q. And did Dr. Kaye raise the issue of her son
6 being treated or needing treatment prior to the shift
7 change with you?

8 A. I was aware of it, yes. She had -- it had
9 come up in discussion. She had told me about her son.

10 Q. And did it -- did it interfere with her
11 ability to do her work prior to the shift change, to
12 your knowledge?

13 MS. CANFIELD: Objection to form. You can
14 answer.

15 A. Not to my knowledge.

16 Q. So to your knowledge, before the shift
17 change, you didn't notice that Dr. Kaye had any issues
18 with type and leave length you worked with her; right?

19 MS. CANFIELD: Objection to form. You can
20 answer. No foundation. Go ahead.

21 A. Not to my knowledge.

22 Q. It didn't seem that she had any problems
23 covering the clinic at that time; right?

24 MS. CANFIELD: Objection. You can answer.

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1 A. No as far as I could see, no.

2 Q. Okay. And what time do the courts -- what
3 time do the courts open in the Bronx; do you remember?

4 A. Courts themselves?

5 Q. Well, the court in the Bronx -- in the Bronx.

6 A. I think the court in the Bronx would
7 typically open about 10-, 10:30.

8 Q. And what time would defendants be presented,
9 like the earliest?

10 A. It would vary. I think there were sometimes
11 when we would get defendants at 9:30 or 10:00.

12 Q. But never before 9:00; is that right?

13 MS. CANFIELD: Objection. You can answer.

14 A. Not that I recall, no.

15 Q. Did you ever get defendants at 9:00?

16 A. I don't think so, not that I recall.

17 Q. So would it be fair to say that defendants
18 presented as early as 9:30 and around 10:00 onwards,
19 typically?

20 A. Yes, I think that's fair to say.

21 Q. So based on that, would it be necessary for a
22 center director to be at the clinic at 8:00 in the
23 morning?

24 MS. CANFIELD: Objection. There's no

1 foundation. You can answer.

2 A. I can't say whether it's necessary or not.

3 But the defendants, as you noted, were typically
4 produced 9:30 and later.

5 Q. Okay. So did Dr. Kaye complain about any
6 other, I guess, repercussions, associated the with the
7 change in shift?

8 A. I believe, I think I mentioned this earlier
9 also, per this agreement with -- this prior agreement
10 with doctor's counsel and I think H&H, that it -- I
11 don't remember her saying it changed her -- changed the
12 length of her workday or changed her lunch hour or
13 something. It somehow altered her schedule.

14 Q. Did she talk to you about a conversation she
15 might have had with Mr. Wangel and/or Ms. Laboy prior to
16 taking the position over at CHS where she asked if there
17 would be any changes in her working conditions?

18 A. She did mention --

19 MS. CANFIELD: Objection to form. You can
20 answer.

21 A. She did mention having a conversation. I
22 remember her mentioning Jonathan Wangel.

23 Q. And what do you remember her mentioning about
24 Jonathan Wangel?

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1 A. The specifics are really -- I don't remember
2 if she had one conversation with him or more than one.
3 I really don't remember the specifics of what he might
4 have said.

5 Q. Now, did you observe any of -- did you
6 observe Dr. Kaye being treated differently than any of
7 the male directors yourself?

8 MS. CANFIELD: Objection to form. You can
9 answer.

10 A. I did not observe that, no.

11 Q. Did you -- did she complain to you about
12 being treated about her male counterparts outside of the
13 pay parity?

14 MS. CANFIELD: Objection. You can answer.

15 A. I don't know if I recall anything other than
16 the pay parity.

17 Q. What about the title change, do you remember
18 that?

19 A. I do remember something about that, yes.

20 MS. CANFIELD: Can you put in an objection
21 before that. Thank you.

22 THE WITNESS: Sorry.

23 Q. What did you remember about the title change,
24 Dr. Winkler?

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1 A. I remember Dr. Kaye --

2 MS. CANFIELD: Objection. Yes. Go ahead.

3 A. -- telling me that they had changed her
4 title, I believe, from medical director to director.

5 Q. And what do you remember about the
6 conversation, Dr. Winkler?

7 A. Dr. Kaye felt that was a demotion.

8 Q. When did you -- when did you have that
9 conversation with Dr. Kaye; do you remember?

10 A. I'm fairly certain it was after I went to
11 Brooklyn, maybe mid to late 2018. I honestly don't
12 recall.

13 Q. And did you agree with Dr. Kaye that the
14 change in title from director -- from medical director
15 to director was a demotion, in fact?

16 A. No, I don't agree that it's a demotion.

17 Q. Okay. Why don't you?

18 A. Because the way I look at it, if the word
19 medical is in front of director, medical's a qualifier.
20 And to me, a medical director would be part of an
21 organization that would ultimately report to the
22 director. So in my opinion, it didn't seem like a
23 demotion.

24 Q. Did you think Dr. Kaye was being reasonable

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1 about that issue with the change in title?

2 A. Well, I feel that it bothered her, and she
3 had her position about it. I mean, I had my opinion,
4 she had her opinion. I don't think it was unreasonable
5 to object to it.

6 Q. Was everyone made to change their title to --
7 I mean to director?

8 A. I don't know if anybody else's title was
9 changed. I don't know what technical titles for the
10 other directors in the clinics are.

11 Q. But you don't know if Dr. Mundy's title was
12 changed or not; right?

13 MS. CANFIELD: Objection to form. Maybe you
14 should define what you mean by title.

15 Q. You wouldn't know if Dr. Mundy's title was
16 changed from medical director to director, would you?

17 A. That's correct, I wouldn't know that.

18 Q. Now, did Dr. Kaye also talk to you about
19 being excluded from meetings with Dr. Jain?

20 A. Which meetings are you referring to?

21 Q. Not the work meetings, just meetings at the
22 Bronx Court Clinic.

23 A. I missed the first part. There was noise.

24 Q. Meetings at the Bronx Court Clinic.

1 A. I seem to remember her saying that Dr. Jain
2 had come to the clinic and met with, might have been Dr.
3 Brayton, might have been Dr. Mullan, had met with the
4 other clinician there, and she had not been included. I
5 do recall that.

6 Q. Now, how often did Dr. Jain meet with you,
7 Dr. Winkler?

8 A. We didn't have a regularly scheduled -- well,
9 we had a regularly scheduled meeting, but it didn't
10 always happen. I would say he met with me once -- maybe
11 once a week, once every two weeks.

12 Q. But -- okay. And you said you had a
13 regularly scheduled meeting; was it a weekly, regularly
14 scheduled meeting, or was it more than once a week?

15 A. It was a weekly, regularly scheduled, but
16 often times, he would cancel and say we'll meet next
17 week.

18 Q. Did you know if he met with Dr. Kaye's office
19 when he met with you?

20 MS. CANFIELD: Objection to form.

21 A. I -- I don't know about how often he met with
22 Dr. Kaye.

23 Q. Did you know how often he met with Dr. Mundy?

24 A. I did not know.

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1 Q. Did you ever know how often he met with Dr.
2 Owen?

3 A. No.

4 Q. Were there instances where Dr. Jain met with
5 all of the directors except for Dr. Kaye?

6 MS. CANFIELD: Objection to form. You can
7 answer.

8 A. I don't remember if there was a meeting when
9 Dr. Kaye -- meeting of the directors where Dr. Kaye
10 wasn't there. We didn't have that many directors'
11 meetings all together. I don't recall if we met without
12 her at any point.

13 Q. Now, did you ever have any complaints about
14 Dr. Jain yourself?

15 A. I didn't have complaints about Dr. Jain. As
16 I mentioned earlier, I have a different approach to
17 doing my interviews and my reports, which I actually
18 discussed with him, and -- like I said earlier.

19 Q. Now, at any point, did you have a discussion
20 with Dr. Kaye about Dr. Jain throwing out his notes?

21 MS. CANFIELD: Objection to form. You can
22 answer.

23 A. We did, at one point, have a discussion about
24 keeping interview notes, yes.

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1 Q. And what was that discussion?

2 A. I believe we spoke about the fact that Dr.
3 Jain destroyed his interview notes, and we did not -- we
4 put our interview notes in the file. We had a different
5 procedure in the case file in the clinic.

6 Q. And did Dr. Kaye tell you that Dr. Jain
7 destroyed his interview -- interview notes?

8 A. I don't know if she told me, or I knew it
9 already. I forget where I learned it.

10 Q. Now, did you make the statement, "I can't
11 tell him had to do. He's by boss, but I'm keeping my
12 notes, and I'm telling my people to keep theirs"?

13 A. Yeah, I seem to remember saying something
14 along that line.

15 Q. Now, did it ever come to your attention that
16 Dr. Jain accused Dr. Kaye of stealing his interview
17 notes?

18 A. I did not know about that, no.

19 Q. And you were -- you were still working at the
20 clinic at this time, I take it. Did you know Dr. Kaye
21 to steal interview notes during the time that you worked
22 at the clinic with her?

23 A. No.

24 Q. Does that sound like something she would do

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1 based on your knowledge of working with her all those
2 years?

3 A. No.

4 Q. Now, I'm just going to ask you about the, I
5 guess, dynamics between Dr. Ford and Dr. Kaye after she
6 started complaining about pay parity when CHS took over.
7 Did you ever see Dr. Ford and Dr. Kaye together during
8 that time?

9 A. I think we had meetings. I think Dr. Kaye
10 and I met with Dr. Ford. This is -- this is post-CHS
11 we're talking?

12 Q. Yes.

13 A. I have to think now. I don't recall if we --
14 I remember meetings with Dr. Kaye and Dr. Ford, but I'm
15 not -- I'm not sure if they were pre or post-CHS, to be
16 honest.

17 Q. Did she seem to get along with each other's
18 -- generally?

19 A. Yes, I think so.

20 Q. At any point, did you notice tension between
21 the two of them?

22 A. No, I didn't.

23 Q. Did Dr. Kaye ever complain to you about how
24 she was being treated by Dr. Ford?

1 A. I don't recall a specific complaint. I
2 believe in the context -- I don't know whether she
3 referenced Dr. Ford. I don't recall in the context of
4 the pay disparity and the title change and shift change.
5 I don't recall. I think Dr. Ford was still there at
6 that time. I don't recall a specific reference to Dr.
7 Ford.

8 Q. And did you have -- did you have any
9 conversations with Dr. Kaye about how Dr. MacDonald was
10 engaging her?

11 MS. CANFIELD: Objection to form. You can
12 answer.

13 A. When you say -- when you say "engaging her,"
14 do you mean meetings with Dr. MacDonald?

15 Q. Well, just in general. Just the treatment or
16 any kind of contact he may have had with her.

17 A. I don't recall that. I don't recall how much
18 contact Dr. MacDonald had with Dr. Kaye at the clinic at
19 that point.

20 Q. So we went through the shift change and the
21 title change and some of the meetings, you know, that
22 Dr. Kaye was not being invited to some of these
23 meetings. Did you notice that Dr. Kaye's attitude
24 towards work starting to change during this time?

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1 MS. CANFIELD: Objection to form. No
2 foundation. You can answer.

3 A. Do you mean her approach to her work or her
4 attitude about what she was going through?

5 Q. Her attitude about what she was going
6 through. Let's start with that.

7 A. Well, she was not happy about it.

8 Q. Okay. And can you elaborate?

9 A. Well, I think I already have. She was
10 unhappy about the disparity in her pay, and she was
11 unhappy about the change in title and the change in the
12 work schedule.

13 Q. Did it affect her attitude towards work in
14 general?

15 A. Not as far as I know.

16 Q. Did it affect how she spoke about CHS?

17 A. Well, she was unhappy. I keep coming back to
18 that. So she wouldn't speak about CHS in glowing terms
19 if she was unhappy about what they were doing, but it
20 didn't change her approach about her doing her job, as
21 far as I could see.

22 Q. Okay. So I'm going to ask you some questions
23 about some of the policies that you may have worked on.
24 I'm going to show you the first one, and I'm going to

1 mark this as Plaintiff's Exhibit 1.

2
3 (Plaintiff's Exhibit 1, DOCUMENT BATES
4 STAMPED NYC_125 through NYC_127, was marked
5 for identification.)
6

7 MS. HAGAN: For the record, Plaintiff's
8 Exhibit 1 bears the Bates Stamp Series NYC_125
9 through 127 and I'm sure you'll need an
10 opportunity to look at the document.

11 Q. The first -- the first page is actually an
12 email from you to Dr. Kaye. And the subject's third
13 party -- third party-observers during psych testing. Do
14 you see that; right?

15 A. I see that.

16 Q. And I'm going to scroll downwards. Now, you
17 sent an article to Dr. Kaye. Do you remember that?

18 A. Yes, I do remember that.

19 Q. And for purposes of the record, the article
20 is entitled "Presence of Third-Party Observers During
21 Neuropsychological Testing." Now, do you recall why you
22 sent this article to Dr. Kaye?

23 A. I believe it was in response to a request by
24 attorneys to sit in during psychological testing of

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1 defendants.

2 Q. And what was your position about attorneys
3 sitting in on psychological tests?

4 A. That they should not be allowed to sit in.

5 Q. And do you recall what attorney was
6 interested in sitting in on an exam?

7 A. I don't recall.

8 Q. Do you recall the context in which the issue
9 arose?

10 A. No, I really don't.

11 Q. Besides sending this article to Dr. Kaye, do
12 you recall any other conversations you may have had with
13 other CHS staff members about this particular topic?

14 A. At any time?

15 Q. Yes.

16 A. I believe this topic came up again after I
17 moved down as director of Brooklyn. And I believe I
18 sent this -- well, I sent it to one of the attorneys
19 there from Legal Aid who we deal with regularly, and I
20 believe I sent it to Dr. Jain also.

21 Q. When you sent this article to Dr. Jain, what
22 led to that?

23 MS. CANFIELD: Objection to form. You can
24 answer.

1 A. Well, if I'm remembering correctly that I did
2 send it to him, it would have been in response to a
3 discussion about allowing attorneys or anyone else to
4 sit in during psychological testing sessions.

5 Q. Do you remember the circumstances that led
6 you to send this article to Dr. Jain?

7 MS. CANFIELD: Object to the form. He can
8 answer.

9 A. I think it was a discussion about how some
10 directors were allowing people to sit in. And I believe
11 it came up in discussion that I did not think it was
12 appropriate, and that I referenced this article and then
13 sent it. That's my recollection.

14 Q. Now, did you experience any retaliation when
15 you raised this issue?

16 MS. CANFIELD: Objection. He can answer.

17 A. No, I didn't.

18 Q. You didn't experience any hostility?

19 A. Hostility, no.

20 Q. And what directors would allow an attorney to
21 sit in on their exams?

22 A. I believe Dr. Owen was allowing attorneys, at
23 times, to sit in on psychological testing.

24 Q. Now, I'm going to show you what is --

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1 MS. HAGAN: I'm going to stop the share, and
2 then I'm going to open up another document. I'm
3 going to show you what's going to be marked as
4 Plaintiff's Exhibit 2.

5
6 (Plaintiff's Exhibit 2, DOCUMENT BATES
7 STAMPED NYC_291 to NYC_295, was marked for
8 identification.)
9

10 Q. Plaintiff's Exhibit 2 bears the Bates Stamp
11 Series NYC_291 to NYC_295. And I'll give you an
12 opportunity to read it. But just for the record, this
13 exhibit is from Dr. Jain to, I guess, the center
14 directors. And it's dated June 28th, 2018, and subject
15 is new FPECC policy. And it says -- Dr. Jain says, here
16 is the finalized FPECC private practice policy. Please
17 do not, in all caps, distribute to staff yet. I think
18 the best way to disseminate the information is to meet
19 with the staff directly. I'll talk each of you about
20 how to handle it at each of the boroughs. For now, I am
21 jut sending among us directors first. Hopefully, we can
22 have a plan to discuss with all the staff. Now, you
23 remember this email; right?

24 MS. CANFIELD: Objection. You can answer.

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1 A. I remember an email from Dr. Jain on practice
2 policy, yes.

3 Q. Okay. And do you recall reading -- what do
4 you -- what do you recall about the private practice
5 policy?

6 MS. CANFIELD: Objection to form. He can
7 answer.

8 A. That there is a policy. The private practice
9 policy is that the clinic clinicians are not allowed to
10 take any private practice cases in the borough in which
11 they work. And they are not allowed to do any
12 competency evaluation private practice cases anywhere in
13 the city of New York.

14 Q. Now, do you have a private practice yourself,
15 Dr. Winkler?

16 A. Yes, I do.

17 Q. Okay. And I guess, did this happen before or
18 after the private practice policy in June of 2018?

19 MS. CANFIELD: Objection to form. Did what
20 happen? You can answer.

21 MS. HAGAN: The creation of his private
22 practice.

23 A. I'm not sure I understand. Did the policy
24 happen? Did the --

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1 Q. No. Did your practice -- when did you start
2 your practice -- your private practice?

3 A. My private practice started probably back in
4 2009, maybe.

5 Q. Did you have to adjust how you operated your
6 private practice after this policy was issued?

7 A. I wasn't taking any 730 cases before that.
8 And yes, I did have to adjust, because now I was in
9 Brooklyn and I could not take any Brooklyn cases at all.

10 Q. Now, were you aware that Dr. Kaye had
11 allegations that some of the directors were engaged from
12 double-dipping?

13 A. What do you mean by double-dipping?

14 Q. Well, I guess working -- I guess, to a
15 certain degree, either using city resources in order to,
16 I guess, conduct their private practices. For example,
17 seeing their private practice cases at the court clinic.

18 A. That --

19 MS. CANFIELD: Objection to form. You can
20 answer.

21 A. That she was accused of it?

22 Q. No. No. That she accused others of doing
23 such things.

24 MS. CANFIELD: Objection to form. You can

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1 answer.

2 A. I wasn't aware that she accused others.

3 Q. Okay. Okay. Were you aware that any -- were
4 you aware of any of the other directors being accused
5 as-- I mean, engaging in double-dipping?

6 MS. CANFIELD: Objection to form. He can
7 answer.

8 A. Not that I was aware of.

9 Q. Okay. Was there ever a time where perhaps --
10 not double-dipping necessarily.

11 Was there a time where -- I'm not going to
12 proceed to that one.
13 Were you aware of any potential problematic behavior
14 with the directors and their private practice since the
15 private practice policy was issued?

16 MS. CANFIELD: Objection to form. You can
17 answer.

18 A. I wasn't aware of any problem.

19 Q. Was it ever brought to your attention that
20 there might be some problems with how the directors were
21 engaged in private practice?

22 MS. CANFIELD: Objection to form. He can
23 answer.

24 A. It didn't come to my attention.

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1 Q. No one complained to you?

2 A. About the other directors?

3 Q. Right.

4 A. No.

5 Q. So do you know what led -- led to this
6 practice of policy being issued by CHS management?

7 A. As far as I know, it was, I believe initially
8 -- once CHS took over, I think Dr. Virginia Barber was
9 particularly involved in this, that they were looking to
10 eliminate all private practice for the clinicians, court
11 clinic clinicians. And that this, excuse me, was a
12 compromise or solution they came up with.

13 Q. Did Dr. Kaye ever complain to you or express
14 her opposition to you about the private practice policy?

15 MS. CANFIELD: Objection. He can answer.

16 A. I don't recall her ever objecting to it. I
17 don't -- not that I recall.

18 Q. I just want to be -- I just want to make sure
19 that the record's clear. When you say "clinicians,"
20 you're talking about the forensic court evaluators;
21 right?

22 A. Yes.

23 Q. And I was just wondering if there ever came a
24 time when -- that -- during the July 2018 directors'

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1 meeting, did Dr. Kaye tell you that Mr. Millan reported
2 Dr. Mundy was throwing the results of exams to woo
3 private referrals?

4 MS. CANFIELD: Objection to form. You can
5 answer.

6 Q. Read that -- say that -- the last part again.
7 I didn't really hear it.

8 A. Did there ever come a time when Dr. Mullan
9 told you -- or Dr. Kaye told you that Dr. Mullan
10 reported that Dr. Mundy was throwing the result of exams
11 to woo private referrals?

12 MS. CANFIELD: Objection to form.

13 A. He might have said that to me.

14 Q. And what was your reaction?

15 MS. CANFIELD: Objection. You can answer.

16 A. If it's true, it's clearly inappropriate.
17 But I don't know if it's true or not.

18 Q. Do you recall anybody's viewpoints towards
19 Dr. Kaye changing after she made that comment?

20 MS. CANFIELD: Objection to form. You can
21 answer.

22 A. I don't recall any -- observing any change in
23 how people interacted with her after that.

24 Q. Did you ever hear any comments that people

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1 were upset or perhaps frustrated with Dr. Kaye because
2 of her position on private practice?

3 MS. CANFIELD: Objection to form. Private
4 practice or what Dr. Mundy is allegedly doing?

5 MS. HAGAN: I said the private practice
6 policy.

7 MS. CANFIELD: You can answer.

8 A. Were people upset with her because of her
9 position on the private practice policy?

10 Q. Yes.

11 A. Not as far as I know.

12 Q. Do you -- do you recall if Dr. Kaye opposed
13 the private practice policy herself?

14 MS. CANFIELD: Objection. You can answer.

15 A. Not that I know of. I don't know that she
16 opposed it.

17 Q. She never said she was in opposition to it --
18 to you about it; right?

19 MS. CANFIELD: Objection.

20 A. Not that I recall.

21 Q. So let me go to Plaintiff's Exhibit 3.

22

23 (Defendant's Exhibit 3, DOCUMENTS BATES

24 STAMPED NYC_320 to NYC_329, was marked for

1 identification.)

2
3 Q. And Plaintiff's Exhibit 3 bears the Bates
4 Stamp Series NYC_320 to NYC_329. Tell me when you see
5 the document. You're seeing the document; right?

6 A. Yeah.

7 Q. Now, this is for -- Exhibit 3 bears the Bates
8 Stamp Series NYC_320 through 329. I'm going to give you
9 an opportunity to look at it. In the meantime, I'm just
10 going to read on the record that the exhibit begins with
11 an email to Dr. Kaye to herself. Then there's an email
12 from you, Dr. Winkler, to Dr. Kaye on July 6th, 2018.
13 You see that; right?

14 MS. CANFIELD: Objection. I see it beginning
15 with --

16 MS. HAGAN: I did say that it was Dr. Kaye to
17 herself. And then under that, there's an email
18 from Dr. Winkler to Dr. Kaye.

19 MS. CANFIELD: Okay. So the most recent of
20 the emails is the email from Dr. Kaye to herself.

21 MS. HAGAN: Right.

22 MS. CANFIELD: And she's forwarding all these
23 other correspondence that actually begins on June
24 1st, 2018, from Elizabeth Owen to Joseph Zayas.

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1 MS. HAGAN: Actually, it appears that the
2 initial email to --

3 MS. CANFIELD: Which is Bates stamped
4 NYC_000321.

5 MS. HAGAN: The original email is from
6 Antonio Diaz to James Smoot. And the subject is
7 new CPL 730 procedures; right? And then Dr. Owen,
8 on June 1st, 2018, to -- I guess Dr. Owen's email
9 is first (indiscernible).

10 MS. CANFIELD: That was first.

11 MS. HAGAN: And then after that, Antonio Diaz
12 emails James Smoot.

13 MS. CANFIELD: Correct.

14 MS. HAGAN: Subject, CPL 730 procedures.

15 MS. CANFIELD: Correct.

16 MS. HAGAN: And then Mr. Smoot then contacts
17 Dr. Winkler --

18 MS. CANFIELD: Correct.

19 MS. HAGAN: -- on July 2nd.

20 MS. CANFIELD: Correct.

21 Q. Now, for purposes of just getting to the crux
22 of this, and you're reading this, the July 2nd email
23 from James Smoot -- first off, who is James Smoot? That
24 would be helpful.

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1 A. I think he's -- if I recall correctly, I
2 think he's head clerk or higher level clerk in the
3 Brooklyn criminal court system.

4 Q. And you're saying high level clerk to the
5 judges in that -- in that courthouse; right?

6 A. Yes.

7 Q. So then he says to you, Dr. Winkler, can you
8 review the attachment and offer any insight as to how
9 this might facilitate your request and allow us to
10 expedite what we do on our -- on our end, please. And
11 thanks. I'm of the mindset that we can adopt this
12 polite program here, I guess, at the Kings County Court
13 Clinic and tweak it a bit to accommodate your request.
14 And then he says, Best, James. And then you forward
15 this to Dr. Kaye. Now, why did you forward this
16 exchange to Dr. Kaye; do you recall?

17 A. I don't recall. I don't even recall what the
18 email was about without seeing more.

19 Q. So let's go down further. This is the new
20 CPL 730 Form and Procedures for Criminal Courts. You
21 see that; right?

22 MS. CANFIELD: For Queens.

23 MS. HAGAN: For Queens. I said for Queens,
24 yes.

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1 MS. CANFIELD: Just note for the record, it
2 appears (indiscernible) information, that the
3 exhibits seem to be duplicated.

4 MS. HAGAN: I don't see how this is
5 duplicated at all. But this -- this is the
6 actual --

7 MS. CANFIELD: No. There's one copy of the
8 new form and procedures, and then the HIPAA
9 release, and then the words "disclosed." And then
10 the same three documents repeat again.

11 Q. Now, am I at a place where you have finished
12 -- gotten a chance to finish going through this
13 particular document, Dr. Winkler?

14 A. Yeah, I skimmed it. I haven't read it word
15 for word, to be honest, but I skimmed it.

16 Q. Okay. And then there is like the HIPAA
17 authorization to disclose form, and there's the order to
18 disclose and provide records. That's on page 6 of the
19 exhibit. Then, I guess, it repeats itself here after 6.
20 So I guess 7 through 10 might be repetitious. Well,
21 actually the complete production from defendants. So I
22 guess it's duplicative from their part. But then again,
23 I'm not sure if the language is exactly the same. So I
24 won't say that. I won't commit to that yet.

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1 So what I want to ask you, Dr. Winkler, I
2 want to ask you about the bullets from the Queens pilot
3 project, right, and whether you actually agree with
4 these bullets on whether or not it would be applicable
5 to the Brooklyn Court Clinic. Okay.

6 So the first bullet informs a 730 Order Form similar to
7 the UCMS 730 Order Form for criminal court will be
8 utilized until such time that the UCMS supreme court
9 forms are rolled out. Do you recall that?

10 A. This is something that I think they were
11 doing in Queens. And we weren't doing any of this in
12 Brooklyn.

13 Q. Did you ever do any of this stuff in
14 Brooklyn?

15 MS. CANFIELD: Objection to form. He can
16 answer.

17 A. This 730 Order Form, no. I think this was a
18 review of the Queens pilot project, but we didn't do any
19 of that work in Brooklyn.

20 Q. Okay. So no HIPAA consent and/or release of
21 information form were ever used in Brooklyn?

22 A. No.

23 Q. So the information regarding to the records,
24 right, he -- I think (indiscernible) if the defense

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1 attorney and defendant agree to do so, the defendant can
2 sign a HIPAA consent for the release of records to the
3 psychiatric examiner, or on a case-by-case basis, the
4 judge may sign an order to release certain information
5 records to the psychiatric examiners. Now, you said
6 that that didn't happen in Brooklyn; am I right?

7 MS. CANFIELD: Objection to form. He can
8 answer.

9 A. We never used HIPAA forms for records. We
10 will, on a case-by-case basis, get a judicial order for
11 records.

12 Q. So why didn't you ever use HIPAA forms?

13 A. I don't think a HIPAA form -- I object to
14 using HIPAA form because -- primarily because if a
15 defendant -- if we're raising or the court or whoever,
16 the defense counsel is raising a question about the
17 defendant's capacity to proceed, then my argument is how
18 do they have the capacity to understand what they're
19 signing when they completed a HIPAA form.

20 Q. Okay. Now, there is a discussion here, and
21 maybe you can help me understand what's happening here.
22 This bullet talks about multiple cases, dockets, can be
23 listed on the same form as long as, 1: The highest
24 charge of every one is either a misdemeanor or a felony.

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1 MS. CANFIELD: What page are you on? 3 --

2 3 --

3 MS. HAGAN: 326. 326.

4 Q. And the return part is the same, which should
5 also cover misdemeanor and felony issues. Now, what
6 does that mean?

7 MS. CANFIELD: Objection to form. You can
8 answer if you can.

9 A. When they say can be listed on the same form,
10 I'm not sure what form this is even referring to.

11 Q. Okay. Then the 730 order with endorsement
12 pages and criminal complaint, with any HIPAA and/or
13 judicial request for records. And then I guess it
14 should be sent to a central email address. Did you all
15 have a central email address that dealt with 730 orders
16 in Brooklyn?

17 A. I think we might have had a central email
18 address for orders at one point. But we get our orders
19 in Brooklyn. Some are faxed -- a few of them are faxed.
20 A few of them are emailed, that I'm guessing they go to
21 that central email, and the rest are hand-delivered.

22 Q. Now, here is probably where, I think we had a
23 discussion with, you know, your disagreement. It says
24 that next court dated for all felony 730 examinations

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1 are anticipated to be two weeks from the date that the
2 730 is ordered. You disagreed with that; right?

3 MS. CANFIELD: Objection. You can respond.

4 A. I believe that's very quick, yes.

5 Q. If a 730 is ordered during the weekend, then
6 the court date would be two weeks from the following
7 Monday. You disagreed with that; right?

8 MS. CANFIELD: Objection. You can answer.

9 A. Yes, I think that is very quick.

10 Q. Now, did -- did you all have designated
11 people at the Brooklyn courthouse that you
12 (indiscernible) completed 730 reports to?

13 MS. CANFIELD: Objection to form. You can
14 answer.

15 A. We upload our reports to a system called
16 iSight. It's an electronic report system that all the
17 court clinics are using now. I believe -- I forget when
18 that was implemented. Not soon -- it was implemented
19 not too long after CHS took over. And prior to that, we
20 would send our completed reports to our coordinating
21 manager, who was in essence, the office manager, and
22 then she would forward them to the court.

23 Q. Do you recall the Bronx Court Clinic hard
24 drive crashing pretty early on in CHS's management of

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1 the clinic?

2 MS. CANFIELD: Objection to form. You can
3 answer.

4 A. I think I do remember hearing something with
5 a problem with the hard drive there.

6 Q. Now, what do you remember hearing?

7 A. Really not much more than that. But there
8 was some kind of a problem.

9 Q. Now, did Brooklyn get iSight before the
10 Bronx?

11 A. I don't know.

12 Q. When did Brooklyn get iSight?

13 A. I don't remember exactly. I think we started
14 it maybe summer of 2018.

15 Q. Would you say iSight accurately captured the
16 workload of the -- of the Brooklyn Court Clinic?

17 A. I would say it does, because -- I know that
18 it does. I don't know how efficiently the orders were
19 getting entered into it initially. But now, all the
20 orders we receive are entered into iSight.

21 Q. Initially, were -- were the orders being
22 efficiently inputted into the system?

23 MS. CANFIELD: Objection to form. You can
24 answer.

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1 A. I don't know. I didn't enter the orders, and
2 I don't know -- I think there might have been some
3 initial bugs in entering orders. They were working it
4 out and kind of ramping it up. So I don't know
5 initially if they were all getting in or not.

6 Q. I mean, would you say that iSight would be an
7 accurate repository to assess the workload of a given
8 clinic?

9 A. Currently, I would say yes.

10 Q. Prior to currently, was it -- was there a
11 time that iSight was not necessarily accurate?

12 A. Again, I don't know, because as I said, I
13 don't uploaded the orders. I never did. I know it was
14 phased in, and the coordinating manager in our office,
15 along with the other clerical people were working on
16 getting the orders entered. So at the very beginning,
17 it probably only had a portion of our outstanding orders
18 entered. Now, I think at this point, all active orders
19 are getting entered. So initially, I can't say whether
20 it was accurate or not.

21 Q. Now, did -- did Dr. Kaye ever complain to you
22 or anyone else complain to you about the data being
23 inaccurate regarding their center?

24 MS. CANFIELD: Objection. You can answer.

1 A. You mean the iSight data?

2 Q. The iSight data or the workload data.

3 A. I don't recall if there was something -- I
4 don't recall if there was something connected with a
5 computer problem in the Bronx, that she might have
6 mentioned -- Dr. Kaye might have mentioned at one point
7 about problems uploading orders. I don't really --

8 Q. But she did -- she did complain about the
9 computer issue in the Bronx to you?

10 MS. CANFIELD: Objection. Leading. You can
11 answer.

12 A. I remember hearing about a computer problem
13 in the Bronx.

14 Q. Was there a computer problem in the Bronx
15 before you left the Bronx Court Clinic?

16 A. Not that I'm aware of, but I don't know that
17 we were using it as much as it's probably being used
18 now.

19 Q. When you left the clinic, the Bronx Court
20 Clinic, did you learn of computer problems in the Bronx?

21 MS. CANFIELD: Objection to the form. You
22 can answer.

23 A. Not as far as I know.

24 Q. Did Dr. Kaye ever complain about Kronos to

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1 you?

2 A. I do remember her telling me she was having
3 difficulty accessing Kronos from her office computer.

4 Q. At any point, did Dr. Kaye complain to you
5 about Dr. Jain incorrectly entering her time into
6 Kronos?

7 MS. CANFIELD: Objection to form. You can
8 answer.

9 A. I don't recall if she said that or not.

10 Q. Did Dr. Kaye ever complain to you about being
11 docked pay?

12 MS. CANFIELD: Objection.

13 A. I think she did say something at some point
14 about that. I don't remember a lot of details, but I
15 have some memory that she mentioned some problem with
16 her time being docked some pay, I think.

17 Q. Did she discuss her pay being docked during
18 the Jewish holidays?

19 A. I do remember something, yes, around the
20 Jewish holidays. I remember her saying something about
21 -- I think she said she took those days off, but then
22 got docked or something to that effect.

23 Q. Now, I'm going to show you what's marked as
24 Plaintiff's Exhibit 4.

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(Plaintiff's Exhibit 4, DOCUMENT BATES
STAMPED NYC_464 through 466 AND NYC-471
through 477, was marked for identification.)

Q. Plaintiff's Exhibit 4 bears the Bates Stamp
Series NYC_464 through 466, and then NYC-471 through
477. It's all one -- one exhibit. So what I'm going to
do is to start at the top of the exhibit, which is page
1. And it's from Dr. Jain to the center directors. And
the subject is psychological testing service; right?
And it's dated August 27th, 2018. You see that; right?

A. I don't see anything right now.

MS. HAGAN: Oh, I'm sorry. I didn't share
the screen. I apologize.

Q. Okay. Now, do you see it now?

A. Yes. Psychological testing survey.

Q. Now, I'm going to give you an opportunity to
read it. Let me know when you need me to scroll.

A. You can scroll.

Q. Now, it appears in this first part of the
email, Dr. Jain is trying to develop, I guess, a survey
regarding psychological testing in our court clinics to
help him plan future training and education. Was there
any future training and education after this survey took

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1 place?

2 MS. CANFIELD: Objection to form. You can
3 answer.

4 A. Education by who?

5 Q. By anyone in the clinic.

6 A. Well, within our clinic, we -- when we were
7 working completely in person, would routinely engage in
8 training with the interns who rotated through and the
9 fellows who rotated through at the time.

10 Q. Now, did the Bronx Court Clinic have, like,
11 interns and fellows rotating through?

12 A. We did have the Bellevue forensic track
13 interns rotated through for one of their rotations while
14 they were at Bellevue. And at one point we had forensic
15 psychiatry fellows rotate through -- from the Albert
16 Einstein program. So they did rotate at one point.

17 Q. Now, when you left, did they continue to
18 rotate through?

19 MS. CANFIELD: Objection to the form. You
20 can answer.

21 A. I didn't hear the second part. When I left,
22 what?

23 Q. When you left, did the fellows continue to
24 rotate through?

1 A. No. The fellows had stopped rotating
2 probably a couple of years before I left, I think.

3 Q. Were there any problems with the fellows?

4 A. The problems with the fellows were -- it
5 became -- it came to a point that both Dr. Kaye and I
6 felt that the quality of the fellows that were rotating
7 through, and the result and quality of their work,
8 became more effort for us to supervise and correct their
9 reports than to just do the work ourselves. Plus, some
10 of the fellows who rotated through were resistant to our
11 supervision. And so Dr. Kaye made the decision to
12 terminate that program or involvement with that program.

13 Q. Now, you resumed the program when you went to
14 the Brooklyn Court Clinic; is that right?

15 A. I didn't resume it. When I went to the
16 Brooklyn Court Clinic, there were already SUNY Downstate
17 fellows who were rotating through. And there were also
18 Brookdale Medical School for students who were rotating
19 through. And I continued that for a while, and then I
20 ended that relationship with the both of them.

21 Q. And was it for the same reasons?

22 A. It wasn't necessarily for the same reason.
23 The difference with the fellows in the Bronx -- the
24 fellows in the Bronx were forensic psychiatry fellows.

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1 They were forensic psychiatry trained. Though chose to
2 be involved in forensic psychiatry. The -- I'm sorry.
3 I used word "fellows" for Brooklyn. I meant to use the
4 word "residents." They were psychiatry residents in
5 Brooklyn when I took over.

6 The residents were forced to come to our
7 clinic. They were forced to participate in a forensic
8 rotation somewhere as part of their residency training.
9 And my position became that they came in with little to
10 no forensic knowledge. They had very short rotation
11 turnarounds. It took quite a bit of time to orient them
12 and even bring them up to speed on how we operated and
13 what we did. And for the most part, none of them left
14 with any interest in doing any forensic psychiatry work.
15 So I decided -- I spoke to Dr. Jain about it, and I told
16 him that I no longer wanted to supervise them. I didn't
17 feel it was a good use of either my time or the other
18 clinicians who were supervising them.

19 Q. And I'm going to scroll to, I guess, the
20 survey -- the survey as you completed it. Now, you do
21 recall completing the survey, right, Dr. Winkler?

22 A. As far as I know. It says completed survey
23 attached, so I guess I did.

24 Q. No. Just, you know, I just want to make sure

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1 that you recall. I'm trying to help you out here?

2 A. I can't recall doing it, but I'm assuming I
3 did.

4 Q. So would your best guess how often -- you
5 talk about how often you administer psychological
6 testing. We have for 730 examinations, five percent.
7 Now, before we talked about the volume in the Bronx. So
8 you're saying -- were these numbers based on your volume
9 in the Bronx or in Brooklyn?

10 A. This would have been in Brooklyn.

11 Q. Okay. Would you say that this percentage was
12 the same in -- in the Bronx?

13 MS. CANFIELD: Objection to form. You can
14 answer.

15 A. My sense would be that -- and I think we
16 actually did a little bit more percentage-wise of
17 testing in the Bronx. We did more of what they call 390
18 examinations, which you see listed there, which are
19 general psychiatric evaluations for the courts. We got
20 more orders for those in the Bronx, it seemed, then we
21 do in Brooklyn. And those -- those more often than a
22 730 would involve some testing. But my sense was that
23 maybe slightly more in the Bronx, but it may be roughly
24 -- it's hard to estimate. Roughly the same, maybe

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1 slightly more in the Bronx.

2 Q. Now, about how many 730 examinations would
3 you say Brooklyn had at this point?

4 MS. CANFIELD: Objection to form. He can
5 answer.

6 A. I don't know. I don't know what the total
7 number was for the year. I don't have that information.

8 Q. Okay. And do you -- do you remember about
9 how many 390s that the Bronx may have had when you were
10 there for a year?

11 A. I don't remember numbers, but I would -- I
12 would say we had more because -- I would say
13 percentage-wise, there were more in the Bronx than in
14 Brooklyn, because when I had the Bellevue forensic track
15 interns cycling through, they were legally allowed, with
16 supervision, to conduct and write the 390 evaluations.
17 And pretty much every week, they had a case to work on.
18 We get very few 390 evaluations in Brooklyn right now.

19 Q. Have they been outsourced?

20 A. No, I don't know that they've been
21 outsourced. It's a difference why they're being ordered
22 or why they're not. I don't know why they're not
23 ordered as frequently in Brooklyn. They're court
24 ordered.

1 Q. So the Brooklyn and Queens 390 exams are not
2 outsourced; is that your testimony?

3 A. As far as I know, they're not.

4 Q. Now, you said you -- you went to the -- the
5 circumstances in which you would order psychological
6 tests; right? And you list suspected malingering,
7 cognitive testing, et cetera; right? Now, these are
8 some of the circumstances that, you know, I guess,
9 precipitated ordering the exam for Mr. Gonzalez; right?

10 MS. CANFIELD: Objection to the form. You
11 can answer.

12 A. Well, I wouldn't say I ordered them. We
13 conducted them.

14 Q. Right.

15 A. So are you asking me if these reasons listed
16 here in Number 2 are applicable -- if some of them are
17 applicable to Mr. Gonzalez?

18 Q. Yes.

19 A. Yes.

20 Q. Okay. And then, I guess, in here, Number 3
21 says, "What specific questions do you think can be
22 answered through psychological testing?" And you
23 answer, malingering psychosis and/or cognitive
24 functioning, intellectual functioning, neurocognitive

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1 functioning, personality assessment, and diagnostic
2 clarification. Now, I mean, I'm not going to go much
3 more into this, but I'm going to ask you generally: Did
4 you think this survey was a good exercise by Dr. Jain of
5 just trying to assess or, I guess, develop education and
6 training as the -- in these instances [ph.]?

7 MS. CANFIELD: Objection to form. You can
8 answer.

9 A. I guess it gave an overview of what the
10 different directors felt in terms of what could be
11 beneficial through psychological testing. A good -- I
12 don't know how to quantify whether it's good or not, but
13 I'm assuming it gave him some information to work with.

14 Q. Did this -- did this survey result in
15 training and/or education that would relate to the
16 topics covered in this particular survey?

17 MS. CANFIELD: Objection to form. You can
18 answer if you're able.

19 A. Do you mean specific CHS-based training
20 programs related to these topics?

21 Q. Well, first CHS-based training program
22 related to the topics, yes.

23 A. No.

24 Q. Okay. Now, were you or any of your staff, I

1 guess, given the opportunity to pursue training in any
2 of these topics elsewhere?

3 MS. CANFIELD: Objection to form. Answer if
4 you can. I don't think the topics are about
5 training. They want to know how you did and why.
6 Go ahead, you can answer.

7 A. Are you asking, do we have the opportunity of
8 the staff to seek -- to obtain training elsewhere?

9 Q. Did CHS finance or support training
10 externally on any of these topics that are shown here?

11 MS. CANFIELD: Objection to form. You can
12 answer.

13 A. I don't know that CHS provides financial
14 support. They might. I have never taken advantage of
15 it, but I -- I know -- I think -- actually, I think H&H
16 or CHS does provide some type of reimbursement for
17 relevant training. And I think, possibly, the union,
18 the clinicians are in might provide some reimbursement
19 too.

20 Q. Did you ever have any training pertaining to
21 any of these topics while you were at CHS?

22 A. No.

23 Q. Did you know if any of the other directors
24 had training pertaining to any of these topics at CHS?

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1 MS. CANFIELD: Objection. You can answer.

2 A. I don't know about what the other directors
3 did.

4 Q. Did Dr. Jain preside over any training or any
5 of these topics at CHS?

6 MS. CANFIELD: Objection to form. You can
7 answer.

8 A. I don't recall him doing any training. I
9 know he did some interactions with the psychiatry
10 residents at one point. I don't know if any of it
11 involved any training on psychological testing.

12 Q. So what were your -- what were your opinions
13 of this survey overall?

14 A. I don't recall having a firm opinion about
15 it. It was something that it was sent to me to fill
16 out. I just assumed it would provide an overview of the
17 kind of psychological testing that was being done in the
18 different clinics. But I don't know if anything really
19 came out of it.

20 Q. Now, did you -- I'm going to show you what's
21 going to be marked as Plaintiff's Exhibit 5. And
22 Plaintiff's Exhibit 5 bears the Bates Stamp Series
23 NYC_837 through NYC_838.

24

(Plaintiff's Exhibit 5, DOCUMENT BATES
STAMPED NYC_837 through NYC_838, was marked
for identification.)

Q. Now, this email is from Dr. Mundy to
Dr. James. It's dated (indiscernible) 2018. And the
subject is the draft psychological testing policy. You
see that; right?

A. Yes.

Q. And you see -- you see that Dr. Mundy says,
"Cool, looks good"; right?

A. Yes.

Q. And then Dr. Jain responds to Dr. Mundy,
"Thanks everyone for you suggestions. I incorporated
them. I'm actually envisioning an entire
policy/procedure on the scope/limits of the 390s. So
Dan, we can include more specifics there. Beesh."
Right?

A. Yes.

Q. And Beesh, for the record, is Dr. Jain;
right?

A. Yes.

Q. And then Dr. Mundy responds, "Looks good. I
defer to the psychologists' concern about wording and

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1 ethics. One thought: In Manhattan, we have encountered
2 judges who specifically request testing in the course of
3 ordering a 390 or drug court assessment. I think an
4 official stance could be included, in substance, any
5 testing performed is at the discretion of the clinic,
6 and orders specifying testing are not inherently in the
7 scope of this policy, or something worded smarter than
8 that. No biggie."

9 Now, did you agree with Dr. Mundy on that -- on
10 that point?

11 A. Yeah. I don't think the judges should be
12 able to order specific testing, because it's not always
13 warranted. They don't always know what tests might be
14 applicable or appropriate, et cetera. So I think -- go
15 ahead.

16 Q. Did it interfere with your independence as an
17 evaluator?

18 A. I'm sorry. Say that again?

19 Q. Does it interfere with your independence?

20 A. Well, independence, I don't think that it
21 would -- I don't foresee it somehow interfering
22 necessarily in the ultimate conclusion as an evaluator.
23 But I see it as interfering in the process and, perhaps,
24 being needless. And also some defendants, slash,

1 patients can only tolerate a certain amount of time with
2 an interviewer or test, and it might not be warranted or
3 fair to put them through a specific test. Or it may not
4 be fair to put them through a specific test that's not
5 warranted.

6 Q. Does it interfere with your clinical
7 judgment?

8 MS. CANFIELD: Objection to form. You can
9 answer.

10 A. I think it interferes with your clinical
11 judgment in terms of how you would approach a particular
12 evaluation. I don't know that it would necessarily
13 interfere with your ultimate clinical judgment or
14 conceptualist of the defendant after the interview or
15 the evaluation.

16 Q. Now, you then commented, "I think El should
17 be reworded to better conform to the ethical guidelines
18 regarding third-party observers.

19 MS. CANFIELD: I'm going to object. Dr.
20 Winkler's comment occurred prior to Dr. Mundy.
21 This is in reverse order.

22 MS. HAGAN: Oh. Dr. Winkler --

23 MS. CANFIELD: Look at the time stamp,
24 Winkler (indiscernible) 2:18, and Mundy is at

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1 4:04. Same day. Dr. Mundy's comment is after Dr.
2 Winkler's. Just to make it clear for the record.

3 Q. Dr. Winkler, did you make the following
4 statement? I'm going to read it for you.

5 "I think E1 should be reworded to better
6 conform to the ethical guidelines regarding third-party
7 observers. Observers during testing, especially those
8 with a relationship with the person being tested, such
9 as attorneys, potentially violate the standardized
10 administration, validity, and reliability of the tests.
11 The only observers who should be allowed in the room are
12 other trained psychologists or students who have
13 received instruction and supervision in testing, and who
14 are observing as part of their training. I'm concerned
15 that the current, quote, no reasonable alternative, end
16 quote, wording will open the door for others to argue
17 they should be allowed in. Barry." Do you remember
18 that?

19 A. I don't specifically remember it, but I
20 clearly wrote it.

21 Q. Right. Let's go to Section E1 that you were
22 referencing so that we have some context. And I think
23 that would be back in Exhibit 4. So let's go back.

24 MS. CANFIELD: Uh --

1 MS. HAGAN: I'm going to go back, Ms.
2 Canfield. Please allow me to go forward with my
3 deposition without interference. You have the
4 exhibits today. So --

5 MS. CANFIELD: I'm going to object, because
6 this email correspondence was from November, and
7 Exhibit 4, assuming it went out, is dated in
8 August.

9 MS. HAGAN: This is completely inappropriate.
10 That is not a proper objection.

11 MS. CANFIELD: It is. You're misleading the
12 witness.

13 MS. HAGAN: It's not a proper objection.

14 MS. CANFIELD: It might have been --

15 MS. HAGAN: (Indiscernible) objection to
16 form.

17 MS. CANFIELD: Well, objection to form,
18 because it might have been other --

19 MS. HAGAN: It's not an objection. It's not.

20 MS. CANFIELD: It is. There might have been
21 several different versions of the drat, and you
22 can't conclude that --

23 MS. HAGAN: You're coaching the witness, and
24 I'm going to note that yet again for the record,

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1 that --

2 MS. CANFIELD: That's fine. But you're
3 misleading the witness. I just wanted to be clear
4 on the record.

5 MS. HAGAN: 3 -- 3B. 3 was the -- I think it
6 was E. You said E -- here you have --

7 MS. CANFIELD: You don't even have the survey
8 up. You just have the survey. You don't have the
9 policy.

10 MS. HAGAN: So this is --

11 MS. CANFIELD: Actually, the policy is even
12 older. It's from June, not even August.

13 MS. HAGAN: You are telling the witness by
14 coaching the witness.

15 MS. CANFIELD: I'm just saying, you are
16 misleading.

17 MS. HAGAN: You're coaching the witness
18 again. Again. So --

19 MS. CANFIELD: Just saying, you're misleading
20 the witness. So go ahead with your question.

21 MS. HAGAN: I'm not leading the witness. I
22 think that you need to stop. That's what you need
23 to do.

24 MS. CANFIELD: There's nothing that suggests

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1 -- there's nothing --

2 MS. HAGAN: You need to stop.

3 MS. CANFIELD: -- attached to this email that
4 says that that is the policy.

5 MS. HAGAN: I think that E1 should be
6 reworded. So let's go --

7 MS. CANFIELD: I think that's a fair -- I
8 think that's a comment to make, but you're
9 misleading the witness. Actually, it's not even
10 the policy, again.

11 MS. HAGAN: Are you finished?

12 MS. CANFIELD: Yes. You don't have the
13 policy. You don't have the policy --

14 MS. HAGAN: Are you finished?

15 MS. CANFIELD: Yes, I am.

16 MS. HAGAN: Thank you. Okay. Let's look at
17 the policy and make sure that we have the right
18 thing in front of us.

19 MS. CANFIELD: Perfect.

20
21 (Plaintiff's Exhibit 6, DOCUMENT BATES
22 STAMPED NYC_840 THROUGH NYC_842, was marked
23 for identification.)
24

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1 MS. HAGAN: For purposes of this deposition,
2 what will be -- Exhibit 6 bears the Bates stamp
3 series 840, 841, and 842.

4 Q. And I'm going to allow you to look at the
5 policy, Dr. Winkler, and then let me know when I need me
6 to scroll. Okay?

7 A. Okay.

8 MS. CANFIELD: Did you email it to me?

9 MS. HAGAN: You have it.

10 MS. CANFIELD: I do not have it. I would
11 have to search a different database. It was not
12 provided to me in accordance with Magistrate
13 Cott's directive.

14 MS. HAGAN: (Indiscernible). Go ahead.

15 MS. CANFIELD: That's a separate database.

16 MS. HAGAN: You don't have the documents that
17 you produced to me. Tell me --

18 MS. CANFIELD: I don't have it handy to me.
19 As well as Judge Cott said, "Do unto others as you
20 would like them to do with you."

21 MS. HAGAN: Yes. Yes.

22 MS. CANFIELD: I do not have it handy. If
23 you want to, let's just stay on the record while I
24 find it then.

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1 MS. HAGAN: Yes.

2 MS. CANFIELD: Because I have to search a
3 completely different database for it.

4 MS. HAGAN: Go ahead.

5 MS. CANFIELD: So stay on the record while I
6 do that.

7 MS. HAGAN: He's reading. Let's keep
8 reading.

9 THE WITNESS: I'm going to take a quick
10 bathroom break if that is okay, while --

11 MS. CANFIELD: Perfect. Perfect.

12 THE WITNESS: I will be right back.

13
14 (Recess taken from 3:12 p.m. until 3:17
15 p.m.)
16

17 BY MS. HAGAN:

18 Q. Did you have an opportunity to read through
19 Exhibit 6?

20 A. Hold on one second. I kind of lost -- only
21 have a small icon on the screen now.

22 Q. Okay.

23 A. You have to make that larger. Now, I think
24 I'm back, but I'm only seeing -- there we go. Okay.

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1 Q. Is there a part of the document you need me
2 to go to, Dr. Winkler?

3 A. Well, no. I honestly didn't read every word
4 of it, but if you have a question about a specific
5 part --

6 Q. Yes. I do have a question about a specific
7 part. In your email -- in the previous email, you
8 mention that you believe that the wording in section --
9 let's go up to it, E1, right, should be reworded to
10 better conform to the ethical guidelines regarding
11 third-party observers; right? And you talk about
12 observers during the testing; right? And I want to go
13 back to E1 in this document. Okay.

14 Right now, E1 says -- at that time, E1 said,
15 "Administration and Documentation: Unless no reasonable
16 alternative is available, psychological testing shall
17 not be performed with a non-examiner, e.g., attorney
18 present." Now, was that what you were talking about
19 needing to be rewritten?

20 A. Yes.

21 Q. Okay. And what exactly did you believe would
22 be more consistent with the actual guidelines?

23 A. That should say psychological testing shall
24 not be performed with a non-examiner present. That in

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1 my opinion, there are -- I think I said in that email,
2 the -- unless no reasonable alternative is available,
3 leaves the door open to certain individuals making an
4 argument for being allowed to be present.

5 Q. All right. So now, I'm going to show you
6 what we've marked as -- did Dr. Kaye comply with your --
7 you know, your suggestion?

8 MS. CANFIELD: Objection to form.

9 A. I don't recall. That was a draft. I don't
10 recall what the final version was, whether that was
11 taken out or not.

12 Q. Did it ever come to your attention that the
13 policy may have been circulated externally prior to
14 being finalized?

15 A. Circulated to whom?

16 Q. External stakeholders outside of the CHS
17 system.

18 A. I wasn't aware of that, if it happened.

19 Q. Had there ever been any discussions about CHS
20 policy being circulated externally outside -- outside of
21 CHS?

22 A. When you say "external," do you mean -- when
23 you say "outside CHS," do you mean within H&H or --

24 Q. Well, the defense community, the courthouses,

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1 had the policy been circulated prior to their
2 finalization, or I guess, you know -- yeah, finalization
3 (indiscernible)?

4 A. Not as far as I know.

5 Q. So did you -- specifically, let me narrow it.
6 Did you know Dr. Kaye to circulate any policies outside
7 of CHS?

8 A. Not that I'm aware of. I don't know whether
9 she did it.

10 Q. Do you know of any of the other directors who
11 circulated policy outside of CHS?

12 A. Not that I'm aware of. Not that I recall.

13 Q. Did Mr. Peck or -- did Mr. Peck or anyone
14 else get any policies from Dr. Owen?

15 A. I don't know if he did.

16 Q. Now, I did ask you about the managing dual
17 role policy at one point. I want to go over that with
18 you some.

19 A. Okay.

20 MS. HAGAN: So that particular -- this
21 particular exhibit will be marked as Plaintiff's
22 Exhibit 7. And it bears the Bates Stamp Series
23 NYC_1188 to NYC_1190. And I'm going to give you
24 an opportunity to scroll through the document. I

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1 just want to make sure that the Bates stamp series
2 are accurate, that's why I'm scrolling so quickly.
3 So it's right.
4

5 (Plaintiff's Exhibit 7, DOCUMENT BATES
6 STAMPED NYC_1188 to NYC_1190, was marked for
7 identification.)
8

9 Q. I'm going to start -- and for purposes of the
10 record, the email is from Dr. Jain to the center
11 directors. The subject is the FPECC Policy, managing
12 dual roles.

13 And I guess he -- he's telling you at this
14 point that (indiscernible) respective court clinic. Do
15 you recall this document?

16 MS. CANFIELD: Hold on. I do not have this
17 document either.

18 MS. HAGAN: You should have it.

19 MS. CANFIELD: All right. I think
20 (indiscernible). Thank you.

21 MS. HAGAN: Okay. So do you recall receiving
22 this email, and then I guess the doc -- this
23 actual policy, Dr. Winkler?

24 THE WITNESS: I don't see it.

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1 MS. HAGAN: Oh, let me share. I'm sorry.
2 Sorry about that. Now, you should see it. Do you
3 have it?

4 THE WITNESS: Yes.

5 Q. Okay. So here's the policy. Do you
6 recall -- do you remember this document?

7 A. I will look at it.

8 MS. CANFIELD: You also knew the
9 (indiscernible) myself, please.

10 MS. HAGAN: Oh, okay. I'm sorry.

11 A. Could you scroll just a little, please.

12 Q. Okay.

13 A. Just to catch. Sorry.

14 MS. HAGAN: Yeah, just give me a minute. I'm
15 having technical difficulty again.

16

17 (Off the record for technical difficulties.)

18

19 Q. So now, do you -- I'm going to go back to the
20 exhibit. I'm going to share. Now, to go back to the
21 exhibit, it's dated January 22nd, 2019. You see that;
22 right?

23 A. Yes, I see that email.

24 Q. Right.

1 And at the bottom of the exhibit, for some
2 reason, the policy is dated December 21st, 2018. You
3 see that; right?

4 A. I see that.

5 Q. Okay. Now, prior to receiving the finalized
6 version of this exhibit -- of this policy, did you all
7 -- did you or anyone else have an opportunity to comment
8 on -- on the actual policy before it was finalized?

9 A. I don't recall whether I did or not.

10 Q. Okay. Do you recall an incident that may
11 have contributed to this -- this policy being drafted to
12 begin with?

13 MS. CANFIELD: Objection. Asked and
14 answered. You can answer again.

15 A. I don't recall.

16 Q. But any chance, was there an instance where
17 Dr. Alex Garcia-Mansilla may have tried to sit in on an
18 examination?

19 MS. CANFIELD: Objection. Asked and
20 answered. You can answer it again.

21 A. I think you're referring to what we discussed
22 earlier about her, at some point, trying to sit in on an
23 evaluation at the -- in the Bronx, but I don't recall --
24 I don't recall if that was the impetus to this policy.

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1 Q. Has there been any other instance prior --
2 outside of that that may have led to this policy being
3 drafted?

4 MS. CANFIELD: Objection to form. You can
5 answer.

6 A. Not that I recall.

7 Q. So you don't recall any other third-party
8 treating clinicians seeking to sit in on a forensic
9 psychiatric exam; right?

10 MS. CANFIELD: Objection to form. You can
11 answer. No foundation.

12 A. I don't recall any, no.

13 Q. And do you recall any -- Dr. Alex
14 Garcia-Mansilla tried to sit in on this exam?

15 MS. CANFIELD: Objection to form. You can
16 answer.

17 A. No, I don't.

18 Q. And just for purposes of clarify, AAPL, as
19 well as just forensic psychiatry, in general, really --
20 really reiterate -- I guess, emphasizes the separation
21 between treating and evaluation; am I right?

22 MS. CANFIELD: Objection. You can answer.

23 A. Yes. It makes it clear there's a separation
24 between treatment and evaluation.

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1 Q. And do you believe that this policy
2 reiterates that position?

3 A. You know, I didn't read it word for word.
4 I'd have to absorb it. I don't know whether it does or
5 not. I think it --

6 Q. Can you take -- I'm sorry.

7 A. I think it's an attempt to do that, but I
8 don't know if it does or not.

9 Q. Would you say it's consistent with that
10 premise?

11 A. Yes. I'd say it's consistent with that
12 premise.

13 Q. Do you recall Mr. Wangel or MOCJ getting
14 involved in the dual agency violations at the court
15 clinic?

16 MS. CANFIELD: Objection to form.

17 A. I don't recall knowing anything about that.

18 MS. HAGAN: Okay. So I'm going to go to
19 Plaintiff's Exhibit 8.

20
21 (Plaintiff's Exhibit 8, DOCUMENT BATES
22 STAMPED NYC_1268 to NYC_1269, was marked for
23 identification.)
24

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1 MS. HAGAN: Plaintiff's Exhibit 8 bears the
2 Bates Stamp Series NYC_1268 to NYC_1269.

3 Q. Let me share the screen again. And for
4 purposes of the record, the email is from you, Dr.
5 Winkler, to Dr. Jain -- Dr. Jain. And it's dated
6 February 14th, 2019. And I guess I want to go to the
7 beginning, so you'll have an opportunity to, you know,
8 get the full context.

9 The thread starts with Dr. Jain to the center
10 directors. And it's the FPECC mission draft. This is a
11 draft of the mission and the vision for FPECC that we
12 started discussing at our last directors' meeting. I
13 think this is a good time to revisit it and discuss any
14 feedback or suggestions you have.

15 Do you recall a discussion about the mission
16 of the unit?

17 A. I recall at some point having some discussion
18 about it. I don't recall specifically when it was or
19 when it was discussed, but I do recall it being
20 discussed at some point.

21 Q. You know, Dr. Owen says -- she says -- she
22 interjected -- she says, the idea of retaining highly
23 competent clinical staff. Did you agree with her, you
24 know, I guess, input regarding that?

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1 A. Yes, I guess so. I would think any staff --
2 I would hope any staff you would hire would be highly
3 competent. So -- but I would agree, I guess, with that.

4 Q. Now, ultimately, you -- you agree. You say
5 it looks good, right, the mission statement; right?

6 A. Yes.

7
8 (Plaintiff's Exhibit 9, DOCUMENTS BATES
9 STAMPED NYC_3996 THROUGH NYC_3998, NYC_3044
10 THROUGH NYC_3045, were marked for
11 identification.)
12

13 Q. So then I'm going to show you what's marked
14 as Plaintiff's Exhibit 9. And it pertains to
15 unauthorized recording. And that's dated May 31st,
16 2019. Now, prior to May 31st, 2019, were you aware of
17 any unauthorized recording policy in place at CHS?

18 MS. CANFIELD: Objection. Asked and
19 answered. You can answer again.

20 A. Not that I'm aware of.

21 Q. Okay. And did you have any input on this
22 policy that I'm going to show you regarding unauthorized
23 use -- unauthorized recordings?

24 MS. CANFIELD: What are the Bates stamp

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1 numbers?

2 MS. HAGAN: Bates stamp numbers are NYC_3996
3 to 3998, and then NYC_4044 to 4045.

4 Q. Now, I'm going to scroll to the actual policy
5 itself, if you don't mind, Dr. Winkler, do you?

6 A. I don't mind.

7 Q. Thank you. So here it is. Do you recall
8 seeing this document at any point?

9 A. Yes. I do recall seeing this, I believe.

10 Q. And did you talk to Dr. Kaye about the actual
11 policy at any point?

12 A. I don't recall if I did or not.

13 Q. Did you sign a confidentiality agreement in
14 conjunction with this particular policy, by any chance?

15 MS. CANFIELD: Objection to form. You can
16 answer.

17 A. A confidentiality agreement?

18 Q. Yes.

19 A. With regard to this policy?

20 Q. Just in general, as far as your job at CHS.

21 MS. CANFIELD: Objection to form. You can
22 answer.

23 A. I don't recall signing a specific
24 confidentiality agreement. I don't know. I can't

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1 answer that. I don't recall signing it. Maybe it was
2 called something else. I don't know.

3 Q. Okay. In 2019 -- in the summer of 2019, were
4 there any agreements circulated to you or any of the
5 other center directors regarding how you administered
6 exams?

7 A. Agreements?

8 Q. Yes. For you to sign.

9 A. I don't recall. Possibly. I don't recall.

10 Q. Were you -- were any agreements circulated to
11 you as far as what information you would be able to
12 disclose or basically email to yourself?

13 MS. CANFIELD: Objection to the form. You
14 can answer.

15 A. I honestly don't recall. Poss --

16 Q. Were you made -- I'm sorry.

17 A. Possibly, but I don't recall.

18 Q. Was it ever brought to your attention about
19 CHS's proper email procedure?

20 A. Proper email for what?

21 Q. As far as --

22 MS. CANFIELD: Objection. You can answer.

23 Q. As far as sharing -- as far as emailing
24 documents outside of CHS.

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1 MS. CANFIELD: Objection. You can answer.

2 A. I don't recall if there was a specific
3 policy. I know we are not allowed to email outside of
4 the system that has any confidential information.

5 Q. When did you learn that?

6 A. That's, I think, always been the rule.

7 Q. Where was that rule written or stated?

8 MS. CANFIELD: Objection to form. You can
9 answer.

10 A. I think it's a basic -- I think it relates to
11 basic HIPAA requirements that you cannot transmit
12 outside of a secure system any kind of confidential
13 information such as that.

14 Q. But the court clinics are HIPAA-exempt, so
15 would that necessarily fall under HIPAA, Dr. Winkler?

16 MS. CANFIELD: Objection to form. You can
17 answer.

18 A. I don't know. I'm not really following what
19 you're asking me.

20 Q. I'm asking whether or not you received any
21 documents from CHS pertaining to unauthorized recordings
22 outside of this policy at the beginning?

23 A. I don't -- I don't recall.

24 Q. Did you receive any documents pertaining to

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1 email usage from CHS?

2 MS. CANFIELD: Objection. Asked and
3 answered. You can answer again.

4 A. I don't recall.

5 Q. Do you recall signing anything about email
6 usage from CHS?

7 MS. CANFIELD: Objection. Asked and
8 answered. You can answer it again.

9 A. Again, I don't recall.

10 Q. And do you recall any documents that required
11 you to sign regarding your knowledge of CHS's
12 unauthorized reporting policy?

13 MS. CANFIELD: Objection. Asked and
14 answered. You can answer it again.

15 A. I don't recall whether I signed anything.

16 Q. And do you recall if you signed anything that
17 pertains to CHS's alleged confidentiality policy?

18 MS. CANFIELD: Objection. Asked and
19 answered. He can answer again.

20 A. Yeah, I don't recall.

21
22 (Plaintiff's Exhibit 10, DOCUMENT BATES
23 STAMPED NYC-360 THROUGH NYC_363, was marked
24 for identification.)

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1 Q. I'm going to show you what's marked as
2 Plaintiff's Exhibit 10. Plaintiff's Exhibit 10 bears
3 the Bates Stamp Series NYC-1913.

4 Now, Dr. Winkler, can you see the document?

5 A. Yes.

6 Q. Now, Dr. Winkler, do you recall writing an
7 email to Dr. Jain, Bronx records request template
8 affidavit and order.

9 A. I don't recall writing it, but I see it. I'm
10 reading it.

11 MS. HAGAN: There might be more than that.
12 It should be 1913 -- I'm sorry about that -- well,
13 actually --

14 MS. CANFIELD: I only see 1913.

15 MS. HAGAN: It's not even 1913. I apologize.
16 Actually, it's the Bronx template.

17 MS. CANFIELD: Oh, 1913 that you sent me is
18 1913.

19 MS. HAGAN: Yeah. I -- actually, I'm sorry.
20 I actually would like to mark Exhibit 10 to be
21 NYC_360 to NYC_363. I apologize for that.

22 MS. CANFIELD: Okay.

23 MS. HAGAN: And that will be Exhibit 10
24 instead.

1 Q. And it's an email from Dr. Winkler to Dr.
2 Jain dated July 11th, 2018. Do you see that? Do you
3 remember this email, Dr. Winkler?

4 A. No, I don't remember it, but there it is.

5 Q. For the purposes of the deposition, Dr.
6 Winkler sent Dr. Jain an email with the subject, "Bronx
7 Records Request Template Affidavit and Order" dated July
8 11th, 2018. And you say, "Hi, Beesh, here are the forms
9 we use in the Bronx. I think that specifically asking
10 for redacted records is a better approach." You saw
11 that; right?

12 A. Yes.

13 Q. Now, did Dr. Jain have any reaction that you
14 suggested that you didn't ask for redacted records?

15 MS. CANFIELD: Objection to form. You can
16 answer.

17 A. Can you say that again -- ask that again,
18 please.

19 Q. Did Dr. Jain have a reaction when you said --
20 when you suggested that you did not specifically ask for
21 redacted records?

22 A. I don't recall if he had any reaction to it.

23 Q. Okay. Now you used this document in the
24 Bronx. How long would you say you used this document?

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1 A. Can you scroll down a little bit more,
2 please.

3 Q. Sure.

4 A. I believe this looks like the form that I put
5 together. I think I referenced earlier in my testimony
6 about putting together a form order for records that
7 complied with certain requirements for us to get
8 un-redacted records. This looks like that form. I
9 can't be 100 percent positive, but it looks like. And
10 it is that form, I would say, we used it only for a
11 couple of years, two or three years, perhaps.

12 Q. Now, this -- this form is something that you
13 and Dr. Kaye worked together on; is that right?

14 MS. CANFIELD: Objection to form. You can
15 answer.

16 A. Yes.

17 Q. And did you use this form in Brooklyn when
18 you went to Brooklyn?

19 A. I don't remember if I used this form or not.
20 They might have had their own form already that they
21 used. It's possible I used it, but I don't recall.

22 Q. Now, did Dr. Jain have any issues with the
23 form as it is in its current state?

24 MS. CANFIELD: Objection to form. You can

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1 answer.

2 A. I don't recall if he had any issues with it.

3 Q. Did you work with any CHS attorneys in
4 drafting this form?

5 A. If this is the form I drafted, I -- I was
6 given this information by legal -- what was called
7 Rikers Island legal. Some legal counsel at Rikers
8 Island who, I guess, was connected to their records
9 department who gave me the necessary information,
10 sections of the law, wording, et cetera. I don't think
11 I worked with any CHS legal on this.

12 Q. The Rikers --

13 A. Excuse me. Maybe Rikers Island legal was CHS
14 legal, and it wasn't termed that way.

15 Q. Was it a Ms. Caltagirone?

16 A. I don't recall.

17 Q. Let me show you a document that deals with
18 this topic. Maybe that will help. So Plaintiff's
19 Exhibit 11 deals with --

20 MS. HAGAN: I'm going mark this as
21 Plaintiff's Exhibit 11.

22
23 (Plaintiff's Exhibit 11, DOCUMENT BATES
24 STAMPED NYC_1913, was marked for

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1 identification.)

2

3 Q. And I'm going to ask you this, actually. And

4 this is from you, Dr. Winkler. And Plaintiff's Exhibit

5 11 bears Bates Stamp Series NYC_1913. And Dr. Winkler,

6 this is from you to Ms. Persaud and Dr. Kaye. And it's

7 dated August 21st, 2107. And the subject is Rikers

8 Island record; right? And -- and it basically -- just

9 for the record, it's a conversation. I spoke with Judge

10 Moore today about the -- whatever case. He was aware of

11 the fact that we received redacted records and was

12 wondering if any progress had been made in resolving the

13 situation. I told him about Judge Torres' involvement

14 and the fact that we still have not heard anything about

15 a resolution. Judge Moore took Wanda Roberts' name and

16 telephone number and said he would be contacting her to

17 find out why his order has not been satisfied. He said

18 it is unheard of for someone to supply redacted records

19 in response to a judicial subpoena. Now, I'm going to

20 ask you about that last sentence. Was it unheard of for

21 someone to supply redacted records in response to a

22 judicial subpoena?

23 MS. CANFIELD: Objection to form. You can

24 answer.

1 A. That was the judge's words, that's why I put
2 it in quotes. It -- up until the time that we started
3 to receive the redacted records, we had not received
4 redacted records in response to a judicial subpoena.

5 Q. And who produced the redacted records in
6 response to a judicial body?

7 A. It would have been the Rikers Island Records
8 Bureau. That's Wanda Roberts is the woman -- I don't
9 know her exact title, but she's basically the director
10 of that Rikers Island Records Bureau, whatever it's
11 called.

12 Q. Who would have given Ms. Roberts the
13 directive to redact the documents?

14 MS. CANFIELD: Objection to form. You can
15 answer.

16 A. I honestly don't know who would have told her
17 to do that.

18 Q. Was it before or after CHS took over
19 management of the clinics?

20 A. This was before CHS took over.

21 Q. Was it before or after Corizon was no longer
22 the vendor managing --

23 A. I --

24 MS. CANFIELD: Objection to form. No

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1 foundation. He can answer.

2 A. Not sure when -- because CHS took over from
3 Corizon before they took over the clinics. I'm not
4 exactly sure when that transition occurred. I believe
5 CHS was in control of the records or in control of the
6 services at Rikers at this time, but I'm not completely
7 sure.

8 Q. So CHS may have been in control of the
9 records and services at Rikers at this time, August
10 21st, 2017; is that right?

11 MS. CANFIELD: Objection as to form. You can
12 answer.

13 A. Yes, they may have been.

14 Q. And had it been your experience up to that
15 point, that redacted records would be provided in
16 response to a -- a judicial subpoena?

17 A. No.

18 Q. So you had never experienced that before;
19 right?

20 A. Not that I recall. If it had ever happened,
21 it was an isolated incident and a mistake that was
22 corrected. But it hadn't occurred as a regular
23 procedure.

24 MS. HAGAN: Okay. So I'm going to draw your

1 attention to what's going to be marked as
2 Plaintiff's Exhibit 12. Plaintiff's Exhibit 12
3 bears the Bates Series Kaye5thProduction012.

4
5 (Plaintiff's Exhibit 12, DOCUMENT BATES
6 STAMPED KAYE5THPROD012, was marked for
7 identification.)

8
9 Q. Now, the top portion of the email is redacted
10 because that's what's stated between myself and Dr.
11 Kaye. And then Dr. Winkler, this is an exchange between
12 you and Dr. Kaye from your personal email account. Do
13 you see that, right, Dr. Winkler?

14 A. I don't see it.

15 MS. CANFIELD: It says 5th Production,
16 October 6th, 2021?

17 MS. HAGAN: Yes.

18 MS. CANFIELD: Underscore October 6th, 2021.
19 Is that the name of the document.

20 MS. HAGAN: I don't have all that on here. I
21 have Kaye5thProduction012, that's what I have.
22 That's what it says.

23 Q. Now --

24 MS. CANFIELD: Hold on. I don't think I have

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1 this document.

2 MS. HAGAN: You do have the document.

3 MS. CANFIELD: I can't find it from when you
4 sent it over.

5 MS. HAGAN: It's amongst the exhibits that
6 you have this morning. You have them.

7 MS. CANFIELD: I don't have it.

8 MS. HAGAN: It's there, Ms. Canfield. All of
9 the --

10 MS. CANFIELD: It's -- it's not in what you
11 sent over. So let me find it. I know you sent me
12 other documents today. You just produced them.
13 Let me find it, please. Okay. And it's the same
14 one, October 6th, 2021. It starts at Bates
15 Kaye5thProduction001 at the bottom.

16 MS. HAGAN: This is not that exhibit.
17 Exhibit 12 is Kaye5thProduction012. That's what
18 it says.

19 MS. CANFIELD: You don't provide it, but I
20 will --

21 MS. HAGAN: You have it.

22 MS. CANFIELD: Yeah. I found it in the
23 production, but --

24 MS. HAGAN: You have it --

1 MS. CANFIELD: -- I think this is a specific
2 exhibit.

3 MS. HAGAN: You do have it. You have them
4 all.

5 Q. Dr. --

6 MS. CANFIELD: I'm not going to quibble with
7 you. I do not have it.

8 MS. HAGAN: I will forward the emails with
9 all the exhibits again. They were there.

10 MS. CANFIELD: Thank you.

11 MS. HAGAN: They're all there.

12 Q. Now, Dr. Winkler, have you had an opportunity
13 to read the exhibit that's marked?

14 A. I just read it now, yes.

15 Q. Okay. So for purposes of the record, the
16 email is from you to Dr. Kaye in your suspected personal
17 account -- Gmail account. Right. And you and say sent;
18 right? And to begin the thread, it's an email from Dr.
19 Kaye and it says, "And get his approval to respond
20 before we do"; right? And then you respond: "I was
21 thinking about it, and I don't think this should wait
22 until you get back from vacation. We don't need the
23 judges pissed at us, and with the city looking at
24 everything. I don't think it's a good idea to drag our

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1 feet. This needs to get resolved. I'll send her an
2 email, and just tell her we only got medical records,
3 and we need everything"; right? That's what you say
4 back. Then Dr. Kaye sends back: "Okay. I think we
5 should clearly state that redacted records of any sort
6 are completely unacceptable and that HIV and substance
7 abuse is central to a psychiatric exam; right?" And
8 then you say "sent." Do you recall this exchange with
9 Dr. Kaye?

10 MS. CANFIELD: Can I ask, is there an email
11 before?

12 MS. HAGAN: No. No.

13 MS. CANFIELD: There's not an email before
14 October 24th, 2017, that was --

15 MS. HAGAN: I said no.

16 Q. Dr. -- Dr. Winkler, do you recall --

17 MS. CANFIELD: Okay. Then I'll ask Dr. Kaye
18 during the deposition, because it looks like
19 there's another email correspondence before this,
20 and we'll ask for its production.

21 MS. HAGAN: You should.

22 Q. Now, Dr. Winkler, do you recall this email
23 exchange?

24 A. I don't recall this specific exchange.

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1 Q. Okay. Now, who's JHC?

2 A. I believe that's Jeremy H. Colley, Dr.

3 Colley, who would have been, at that time, the director
4 of the forensic psychiatry division at Bellevue.

5 Q. Now, clearly, you and Dr. Kaye had, you know,
6 as you said earlier a fair amount of discussion about
7 redacted medical records; right?

8 A. That's correct.

9 Q. And enough so that you discussed it outside
10 of work; am I right?

11 MS. CANFIELD: Objection to form. You can
12 answer.

13 A. Well, we discussed it, yeah, outside of work,
14 yes.

15 Q. And did Dr. Colley also have a position
16 against redacted medical records?

17 A. I don't recall what Dr. Colley's position on
18 it was. I believe that he agreed with us on it, but I
19 don't know for certain.

20 Q. Did Dr. Colley confer with you and/or Dr.
21 Kaye about this topic and how to address it?

22 A. I don't recall if he did. I think we had
23 some discussion with it, but I'm not sure exactly when
24 or what or what he said, but I would imagine we had some

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1 discussion with him about it.

2 MS. HAGAN: Well, then, I would like to show
3 you another exhibit, and it's Plaintiff's Exhibit
4 13.

5
6 (Plaintiff's Exhibit 13, DOCUMENTS BATES
7 STAMPED KAYE5THPROD010 TO KAYE5THPROD011,
8 was marked for identification.)
9

10 Q. Plaintiff's Exhibit 13 bears the Bates Stamp
11 Series Kaye5thProduction010 through 11. You see the
12 email; right? The first part is redacted because that's
13 between myself and Dr. Kaye, and I guess it's the last
14 part of the email. I'm going to scroll down to the
15 beginning of the thread.

16 Now, Dr. Winkler, the beginning of the thread
17 is from you to Dr. Kaye, and it's dated September 21st,
18 2017. Well, first -- the first email again says okay.
19 And then you respond: I'm not bringing attention to
20 anything. I'm trying to gather ammunition for us to use
21 when HHC legal and/or some judge tells us we can't ask
22 for the info any longer without a hearing. Do you
23 recall that?

24 A. I don't recall writing that, but I believe I

1 recall what it's referencing.

2 Q. What is it referencing?

3 A. I believe this refers to, at one point, and I
4 believe I mentioned this earlier, when we started to get
5 the redacted records as to substance abuse, there had
6 been a law passed, maybe 2016, a new law about substance
7 abuse -- obtaining substance abuse treatment program
8 records. And the law, I reviewed it, it contained a
9 very elaborate procedure including having to go before a
10 judge for a hearing to get permission, to get the
11 records. My position at the time, still is, is that
12 that law only applied to records from substance abuse
13 treatment programs, and that we were not asking for
14 substance abuse treatment program records. We were just
15 asking for the defendant's self-report of substance use
16 as part of their mental health records.

17 Q. And what were you -- why would you anticipate
18 that HHC legal would tell you that you, guys, could not
19 ask for that information any longer without a hearing?

20 MS. CANFIELD: Objection to form. You can
21 answer.

22 A. I believe -- I forget who referenced that
23 law. When we first started to look into why this
24 information was being redacted, I believe we were

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1 directed to that law by somebody at HHC legal, or it was
2 passed down to us from HHC legal. I don't recall
3 exactly, but I think that's what happened.

4 Q. Now -- then, Dr. Kaye responded to you,
5 "Okay, LP." Who's LP?

6 A. That would be Lucrecia Persaud, the
7 coordinating manager at the clinic.

8 Q. Okay. "Should also call or email with the
9 court clerk and possible law secretary in the parts
10 where there are outstanding records. I think the law 42
11 is up to the judge's discretion, clearly not strong
12 enough for HHC to fight turning over un-redacted records
13 via email." And do you recall HHC fighting turning over
14 un-redacted records?

15 A. What I recall is we -- we took steps to
16 advise Ms. Roberts that the records were not
17 appropriate, Wanda Roberts. And I believe she told us
18 that it was a response to a new law. And I think that
19 at that time, that was their position that they would
20 not turn over un-redacted records to us without going
21 through this burdensome procedure as per this law for a
22 hearing, et cetera, for the substance abuse records
23 anyway.

24 Q. So then Dr. Kaye continues: "I do not think

1 we should bring attention to the legal arguments against
2 giving us what we need. That's between HHC legal and
3 the judges; right? We need to step back and let the
4 courts duke it out with HHC legal, LAS, etc., but not
5 us." Do you recall that?

6 A. I don't necessarily recall it, but I see it
7 there.

8 Q. Now, would you say Dr. Kaye or either -- Dr.
9 Kaye reaching out to the court about the medical records
10 is part of her job, per se?

11 MS. CANFIELD: Objection as to form. You can
12 answer.

13 A. Yeah, I think that would be part of her job.

14 Q. Would advocating on behalf of the defendant's
15 constitutional rights be part of Dr. Kaye's job?

16 MS. CANFIELD: Objection as to form. I don't
17 think it's -- objection to form.

18 A. Well, yeah. I'm not getting where this is --
19 when you say advocating for their constitutional rights,
20 what are you specifically referring to?

21 Q. For example, earlier you testified that you
22 didn't believe that a defendant who might have a
23 psychiatric condition would be able to knowingly waive
24 or knowingly sign over a HIPAA release; am I right?

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1 A. Yes.

2 Q. And wouldn't you believe -- wouldn't you
3 think that that would invoke that inmates or that
4 defendant's constitutional rights?

5 MS. CANFIELD: Objection to form.

6 A. I don't know whether it falls under a
7 constitutional right, but I think it's definitely a
8 questionable procedure.

9 Q. Okay. What constitutional rights are invoked
10 or, perhaps, touched on by the 730 process?

11 MS. CANFIELD: Objection to form. Are you
12 asking that as a doctor or a lawyer?

13 MS. HAGAN: He's a forensic psychiatrist.
14 This is his job, a psychologist, whose job has
15 both a medical and legal tenants of practice. And
16 he's both a lawyer and a psychologist. Please
17 answer.

18 MS. CANFIELD: That's why I asked. Go ahead.
19 You can answer.

20 MS. HAGAN: He can answer.

21 A. The constitution, or at least it's been
22 determined by the Supreme Court, that it is
23 unconstitutional to prosecute someone if they don't have
24 a basic understanding of how the system works and their

1 charges against them.

2 Q. Now, would it be part of Dr. Kaye's job or
3 any of the other directors' job to fight to ensure that
4 these protections are in place?

5 MS. CANFIELD: Objection as to form. You can
6 answer.

7 A. When you say "protection," what are you
8 referring to?

9 Q. Well, there's a constitutional protection
10 that -- you know, against, you know the due process of
11 law, right, with these inmates; right? Would you agree?

12 MS. CANFIELD: Objection to form. You can
13 answer.

14 A. There is due process rights. Correct.

15 Q. Now, would it be part and parcel of Dr.
16 Kaye's job to advocate for the protection of the
17 inmates' or the defendants' due process rights?

18 MS. CANFIELD: Objection. You can answer.

19 A. I don't think it's any of our jobs to
20 advocate whole heart (indiscernible) or their due
21 process rights, but I think that advocating for
22 competence, appropriate completion of the exams that we
23 are directed to complete, is within our jobs and within
24 Dr. Kay's job.

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1 Q. What about approaching the judges about
2 redacted record?

3 MS. CANFIELD: Objection to form.

4 A. I absolutely believe that's within her job.

5 Q. So if Dr. Kaye did not approach the judge,
6 you -- judges, you would believe she wasn't doing her
7 job?

8 MS. CANFIELD: Objection to form. You can
9 answer.

10 A. I wouldn't say that means she's not doing her
11 job. But I think it is part of her job. There's
12 nothing inappropriate by her getting the -- all of the
13 judges, contacting them.

14 Q. Did you do that?

15 A. I think I referred to one -- or there's one
16 email you showed where I think I had Lucrecia or
17 somebody call the judge to tell them that we were not
18 getting the records and got the judge involved. So yes,
19 I would do it.

20 Q. And did you know the other directors at the
21 other centers to do it?

22 A. I don't know whether they do it or not or did
23 it or not.

24 Q. Did CHS management ever tell you that it was

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1 inappropriate to do that?

2 MS. CANFIELD: Objection as to form. You can
3 answer.

4 A. I don't recall being told that.

5 Q. Now, if complaining about legal violations
6 occurring as a result of violations in the
7 administration of CPL 730 beyond the scope of Dr. Kay's
8 job?

9 MS. CANFIELD: Objection as to form. You can
10 answer.

11 A. You're going to have to break that down and
12 be more specific what you are referring to.

13 Q. Specifically complaining about legal
14 violations; would that be part of Dr. Kaye's job?

15 A. Well, what kind of legal violations?

16 Q. Well, for example, let's say you have an
17 effort to conduct a 730 examination without two
18 evaluators. Would that be Dr. Kaye's job to complain
19 about that?

20 MS. CANFIELD: Objection to form. You can
21 answer.

22 A. To do an evaluation with one evaluator at a
23 time, you mean in separate interviews; is that what
24 you're saying?

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1 Q. No. Just one.

2 A. Well, that is not legal to do it that way.
3 So if it happened that way, and she was aware of it, I
4 would assume it would be part of her job to point that
5 out to someone.

6 Q. It would?

7 A. I'm sorry?

8 Q. Why would it? I mean, her job is to actually
9 evaluate the defendant. Why should she complain if she
10 has completed her evaluation, and there wasn't a second
11 evaluator?

12 MS. CANFIELD: Objection to form. You can
13 answer. Argumentative.

14 A. Yeah. It's confusing. Are you referring to
15 a case that Dr. Kaye would be responsible to complete,
16 and someone does it with one evaluator? Or are you
17 referring to her learning of somebody doing an
18 evaluation with one case that's not part of her clinic?

19 Q. Well, I'm saying in general, if Dr. Kaye made
20 policy oriented (indiscernible), she didn't specifically
21 complain about how she administered exams or how exams
22 were administered in the Bronx. What she complained
23 about were various violations of the 730 law.

24 MS. CANFIELD: Objection. Are you testifying

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1 -- are you testifying, Ms. Hagan?

2 MS. HAGAN: I'm asking for examples, and
3 that's what I'm giving him.

4 Q. Did you ask --

5 MS. CANFIELD: Okay. No, you're -- you're
6 testifying.

7 Q. Dr. Winkler, you asked for examples. Dr.
8 Winkler, at any point, was there an effort made to do
9 examinations without records all together?

10 A. Yes. Some examinations are done without
11 records.

12 Q. Okay. Would it have been Dr. Kaye's job to
13 complain that examinations done with -- just solely on
14 the records was a violation of the CPLR?

15 MS. CANFIELD: Objection as to form. You can
16 answer if you're able.

17 A. As far as I know, doing evaluations strictly
18 on the records does not violate the CPL 730 statute.

19 Q. It doesn't.

20 Does it make it proper?

21 MS. CANFIELD: Objection to form. He can
22 answer.

23 A. I don't -- it's not, in my opinion, a matter
24 of proper or improper. I think doing -- writing

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1 evaluations on -- just on records, is more difficult
2 because you need, in my experience, quite a bit more
3 information to come to a conclusion, come to an opinion,
4 rather, than you do if you are able to meet with the
5 defendant in person.

6 Q. Dr. Kaye is aware that there are violations
7 in the administration of the CPL by CHS, and has legal
8 ramification. Is she, as a non-officer of the court,
9 required to report this?

10 MS. CANFIELD: Objection as to form. I mean,
11 he's not a 30(b)(6) witness as to what his ethical
12 or legal obligations are, but you can answer, Dr.
13 Winkler, if you're able.

14 A. I don't know if she has an obligation or not.

15 Q. You don't know?

16 A. I don't know what her obligation is in that
17 case.

18 Q. Would you feel like you were obligated?

19 A. Repeat the situation.

20 Q. If you are aware of violations of the
21 administration of CPL 730 by CHS, and it has legal
22 ramifications, would you be required to report this?
23 Now, let's say you weren't a lawyer, would you be
24 required to report it?

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1 MS. CANFIELD: Objection to form. You can
2 answer, if you're able.

3 A. I don't know if I would be required to report
4 it, but I -- depending on the violation, I might feel
5 obligated to report it.

6 Q. Is that part of your job, Dr. Winkler?

7 MS. CANFIELD: Objection. Again, he's not a
8 30(b)(6) witness as to what job responsibilities
9 or the scope of his employment is or Dr. Kaye's,
10 but you can answer as best you're able, Dr.
11 Winkler.

12 A. It's not a specific requirement of my job
13 that I'm aware of, but it's -- I think it might be an
14 ethical obligation to do it.

15 Q. Right. But just to be clear, you're saying
16 it might be an ethical obligation. But it's not -- an
17 ethical obligation where? Where, ethically, would you
18 be bound to do so, to report to CHS, if they were
19 violating the law?

20 MS. CANFIELD: Objection as to form. Again,
21 he's not an expert witness in ethics or the
22 requirements, job description, employment of an
23 evaluator, but go ahead.

24 MS. HAGAN: Uh-huh. You're coaching the

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1 witness.

2 MS. CANFIELD: No, I'm not. I'm objecting.

3 He's not a 30(b)(6), but go ahead, Dr. Winkler.

4 MS. HAGAN: Duly noted. Speaking objection.

5 A. I don't know what the ethic -- there's
6 ethical guidelines to psychiatrists and psychologists.
7 They'd have to be reviewed so see if there's some area
8 that appears applicable. I mean, this is all very
9 hypothetical and vague, so it's hard to give a direct
10 answer.

11 Q. Have you ever seen any ethical guidelines
12 that require you, as a forensic psychiatrist, to report
13 violations of the CPL?

14 MS. CANFIELD: Objection as to form. He can
15 answer.

16 A. You know, violations of the CPL is so broad.
17 So no. In those words, no, I have not.

18 Q. If CHS violations in administering the CPL
19 730 compromised public safety, would you be required to
20 report it?

21 A. Compromised public safety?

22 Q. Yes.

23 A. I'm assuming -- I don't know. This is --
24 when you say "compromised public safety," I'm not really

1 sure what you're getting at.

2 MS. CANFIELD: Right.

3 Q. For example, you have a -- you have a
4 defendant who is either being released due to a
5 determination of -- he has a misdemeanor. He's found --
6 he's found unfit -- or he's found fit; right? And he
7 wasn't found fit -- because you're asking me to provide
8 you with a scenario. And I'm asking you what the scope
9 of your job is. So I'm going to stop there. What I'm
10 going to ask you is: What is the scope of your job as
11 it pertains to the administration of discipline?

12 MS. CANFIELD: Again, objection. He's not a
13 30(b)(6) witness, but your personal opinion, Dr.
14 Winkler, you can provide it.

15 A. Scope of my job that applies to what? I
16 didn't hear the last part.

17 Q. As far as the violations of 730.

18 A. I can't answer that question. I --

19 Q. Do you have an obligation to report
20 violations of the 730 at the forensic meetings?

21 A. What is a violation of 730? What is that?
22 What do you mean by violation of 730?

23 Q. If there are -- if there are -- if exams are
24 being administered in a way that's inconsistent with the

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1 CPL, right, do you have an obligation to report that to
2 anyone?

3 MS. CANFIELD: Objection again. Same -- same
4 objection. He's not a 30(b)(6). But go ahead,
5 Dr. Winkler, to the extent that you can respond.

6 A. To the extent that I can respond, if I
7 believe that someone is conducting evaluations that is
8 violating the CPL, then I would feel that, yes, that
9 should probably be recorded to someone.

10 Q. Is that part of your job?

11 MS. CANFIELD: Objection. Answer if you're
12 able.

13 A. That is part of my job.

14 Q. Dr. Winkler, did you say that was not part of
15 your job?

16 A. That's part of my job to report that. Again,
17 I believe it's more of an ethical consideration.

18 Q. But you can't cite where, what ethical
19 consideration; right?

20 A. There's a code of ethics. I don't have them
21 in front of me, so no, I can't.

22 Q. If exams are wrongly used to get inmates off
23 of Rikers by calling them unfit when they are not, do
24 you have to report this?

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1 MS. CANFIELD: Objection. Again, he's not a
2 30(b)(6) witness. Go ahead, Dr. Winkler.

3 A. Could you repeat the question? I didn't hear
4 all of it.

5 Q. If exams are being wrongly administered to
6 get inmates off of Rikers by calling them unfit when
7 they're not, do you have to report this?

8 MS. CANFIELD: Objection. Go ahead.

9 A. If I was -- if I knew that to be the -- to be
10 a fact, then I would feel, yes, I would need to report
11 that to someone.

12 Q. Is that part of your job, Dr. Winkler?

13 MS. CANFIELD: Objection as to form. You can
14 answer if you're able.

15 A. It's not specifically or explicitly stated as
16 part of my job, that I know of.

17 Q. Now, going back to Exhibit 13, I've attached
18 -- you emailed Dr. Kaye: "I've attached my suggestions.
19 I've also emailed some links about CFR that have
20 relevant info. I'm still looking into the HIV question.
21 Another issue is getting un-redacted records for the
22 remaining outstanding orders. I was thinking we should
23 use -- we should have LP email that attorney at HHC,
24 tell her to get us those records ASAP. Having LP do it

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1 would send the additional message that we don't consider
2 this even worthy of an email from us, but that is just a
3 thought." Do you recall writing that?

4 A. I don't recall writing it, but clearly I did.

5 Q. So what do you mean by that document?

6 A. I think I meant that we were getting -- we
7 were not satisfied with the information from the HHC
8 attorneys. And I think maybe we felt that we were kind
9 of being dismissed or not really capable of
10 understanding the question. I think that's what I was
11 implying there.

12 MS. HAGAN: Now, I'm going to go to what
13 would be Plaintiff's Exhibit 14. And I'm going to
14 share. Plaintiff's Exhibit 14 bears the Bates
15 Stamp Series Kaye5thProduction1 through 2. And
16 I'm going to share the screen momentarily.

17
18 (Plaintiff's Exhibit 14, DOCUMENT BATES
19 STAMPED KAYE5THPROD001 THROUGH
20 KAYE5THPROD002, was marked for
21 identification.)
22

23 Q. Now, the top is redacted because it's an
24 exchange between myself and Dr. Kaye. And I'm going to

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1 move to the beginning of the thread. And the beginning
2 of the thread is dated November 16th, 2017. You see
3 this; right?

4 A. Yes.

5 Q. And it's from Lucrecia Persaud to Dr. Kaye,
6 and it CC's you. You see this; right?

7 A. Yes.

8 Q. And it says -- well, Ms. Persaud says, "Hi,
9 Dr. Kaye. Today, we received redacted medical records
10 from Rikers for Mr. Cesar Mederocouret and Mr. Alberto
11 Cruz. Thank you." You saw that; right?

12 A. Yes, I see it.

13 Q. Okay. And then you respond, Dr. Winkler, I
14 guess to Ms. Caltigirone. Now, was this the agency
15 attorney you referenced before?

16 A. I think it is.

17 Q. Okay.

18 A. It is.

19 Q. So you say, "Hi, Ms. Caltagirone --
20 Catagirone." I'm not sure how to pronounce the name.
21 "Please see the below. This is an ongoing problem that
22 needs to be resolved. The judges are becoming
23 increasingly frustrated by these delays." Do you
24 remember this?

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1 A. I don't remember it, but I see it.

2 Q. Do you remember the judges becoming
3 increasingly frustrated by the delays?

4 A. I do recall that, yes.

5 Q. Now, the delays not only affect -- affect the
6 judges. They affect the defendants; right?

7 A. Yes, that's correct.

8 Q. The defendants are -- the defendants' -- the
9 defendants' attention is prolonged because they are not
10 able to proceed with the evaluation process; am I right?

11 MS. CANFIELD: Objection. You can answer.

12 A. Yes, the longer the evaluation is delayed,
13 the longer they are retained.

14 MS. HAGAN: Okay. So then, I'm going to move
15 forward to what will be marked as Plaintiff's
16 Exhibit 15. And it bears the Bates Stamp Series
17 NYC_80.

18
19 (Plaintiff's Exhibit 15, DOCUMENT BATES
20 STAMPED NYC_80, was marked for
21 identification.)
22

23 Q. And for purposes of the record, NYC-80 is an
24 email that starts at the top, from Dr. Kaye to Tasha

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1 Lloyd, and a number of other people, along with Tasha
2 Lloyd, Yanika King, Lucrecia Persaud, yourself, Dr.
3 Winkler, and a number of other HHC staff persons; right?
4 You see this; right?

5 A. Yes, I see it.

6 Q. And I'm going to scroll down to the beginning
7 of this spread so, I guess, you can have some context.
8 Now, who's Tasha Lloyd, Dr. Winkler?

9 A. She's somebody who is associated -- it says
10 it here -- she's associated with the Mayor's Office of
11 Criminal Justice. We refer to it as MOCJ, M-O-C-J.

12 Q. Now, who did MOCJ -- what role did MOCJ play
13 with the court system?

14 A. They don't necessarily play a role. At one
15 point, MOCJ began a pilot project in the Queens Court
16 Clinic to reduce the amount of time between when a 730
17 competency evaluation was ordered, and the report was
18 actually sent to the court.

19 Q. And was that appropriate; do you believe?

20 MS. CANFIELD: Objection. You can answer.

21 A. I don't know -- I don't know if it's a matter
22 of whether it was appropriate or inappropriate. I think
23 it's not a bad thing to try to speed up the process. As
24 you mentioned earlier, people who are kept in jail --

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1 whose evaluations are delayed are kept in jail longer.
2 So I don't think it's inappropriate to try and move
3 things quickly.

4 Q. Do you feel that the court clinic warrants
5 trying to ensure that these evaluations should be
6 processed efficiently prior to this entity being --
7 becoming involved?

8 MS. CANFIELD: Objection to form. You can
9 answer.

10 A. Well, at least speaking for the clinic, I was
11 involved in the Bronx. I thought we were doing the best
12 job we could to move them forward.

13 Q. Do you think anything would have made it
14 easier for you all to move the evaluations forward?

15 A. No. Aside from that redacted records issue,
16 which we discussed, I feel that we were moving the cases
17 as efficiently as we could, really.

18 Q. Would staff in the Bronx -- would more staff
19 in the Bronx have been helpful?

20

21 MS. CANFIELD: Objection to form. You can
22 answer.

23 A. More staff would have moved things quicker,
24 because you would have the availability of more

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1 examiners; so you could see more cases.

2 Q. On average, how many cases would an examiner
3 see per day?

4 MS. CANFIELD: Objection to form. Are you
5 talking about the Bronx?

6 Q. On average, what was your experience, how
7 many how many examinations do you do in a day, Dr.
8 Winkler?

9 MS. CANFIELD: Again, objection. Bronx or
10 Brooklyn?

11 MS. HAGAN: I'm speaking to Dr. Winkler.

12 MS. CANFIELD: Okay. Just trying to clarify.
13 Dr. Winkler, if you can answer --

14 Q. Dr. Winkler, when you were at the Bronx, who
15 many exams did you do per day?

16 A. We averaged about two exams a day.

17 Q. Now, in Brooklyn, how many exams do you do
18 per day?

19 A. We have a different number of doctors, but we
20 still try to average two exams per doctor per day.

21 Q. Okay. That's what I was trying to get at.
22 When you were in the Bronx, one doctor would do an
23 average of two exams a day; is that right?

24 A. Yes.

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1 Q. Okay. That's what I wanted to get at.

2 So now, at any point, was there a discussion
3 from Dr. Kaye about her discussions about cutting
4 corners to speed up the process? Did she address those
5 kind of concerns to you?

6 A. I don't recall. She might have. I don't
7 recall honestly.

8 Q. Do you think that there were efforts made by
9 MOCJ and/or CHS -- do you think that there were efforts
10 made by MOCJ and/or CHS to speed up the process by
11 cutting corners?

12 A. In the Bronx or -- because MOCJ was involved
13 with Queens. They weren't not involved with us.

14 Q. Or just in general.

15 A. I don't know that MOCJ -- I don't know about
16 cutting corners. I don't know that their time frames
17 were realistic, as I said earlier. In the Bronx, I
18 don't recall that there were attempts to cut corners
19 necessarily in -- in moving our exams along.

20 Q. So would -- let's say, for example, doing an
21 exam based solely on the records, would that have been
22 considered cutting corners?

23 MS. CANFIELD: Objection to form. You can
24 answer.

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1 A. It's not an example of cutting corners, per
2 se. If it is the only way to complete an exam, and the
3 examiners feel they have sufficient information to come
4 to an opinion, then as a last resort, I think it's
5 appropriate and not, per se, a way of cutting corners.

6 Q. Has that ever occurred while you were there?

7 A. I didn't hear the first part of your
8 question.

9 Q. Has that ever occurred while you worked at
10 CHS?

11 MS. CANFIELD: Objection to form. You can
12 answer.

13 A. Had what ever occurred?

14 Q. And effort to just do an exam with just on
15 the record instead of asking for a court order?

16 A. Have we ever -- there have been exams done on
17 records, but only if we have enough information to come
18 to the opinion. If we don't, then the judge's advise
19 that we don't have enough information -- that we have
20 obtained the records. We don't have enough information
21 to come to an opinion, and that the judge has the option
22 to issue a force order if they choose. So we've never
23 been -- I've never been made to write a report or
24 records where a force order was an option.

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1 Q. Was there ever an effort -- and we talked
2 about this earlier, to -- I guess to present Mr.
3 Figueroa [ph.] to different sites so that a force order
4 process would be expedited?

5 MS. CANFIELD: Objection to form. You can
6 answer.

7 A. I -- I don't understand. Please, can you
8 rephrase it?

9 Q. Was there a number of times that a defendant
10 would have to refuse production before a force order
11 would go into effect?

12 MS. CANFIELD: Objection as to form. You can
13 answer.

14 A. Force orders, they don't go into effect. The
15 judge has to issue it. It's at their discretion. We
16 would -- I think we would typically try and make two to
17 three attempts to have someone brought in to see them.
18 And then at that point, assuming that we were able to
19 get the records and the records did not contain enough
20 information to come to an opinion, we would then ask the
21 judge if they wanted to issue a force order. And then
22 it's on the judge's discretion on that case if they want
23 to issue a force order.

24 Q. Now, did this issue come into play in the

1 Miguel Figueroa case?

2 A. I don't recall if he was force ordered. He
3 -- we did eventually see him. He might made been force
4 ordered, but I don't recall, per se, if he was or not.

5 Q. Was there an effort to obtain a force order
6 because Mr. Figueroa had resisted production a few
7 times?

8 A. I actually don't recall. If he had resisted,
9 I assume that we would have asked for one, but I don't
10 recall if we did.

11 Q. Now, at any time did Dr. Ford and/or Dr. Owen
12 seek to have, I guess, evaluations on the record, in
13 lieu of a force order?

14 MS. CANFIELD: Objection to form. You can
15 answer.

16 A. I don't know about -- I can't speak for Dr.
17 Ford. I know that Dr. Owen was very opposed to
18 requesting force orders. And I don't know if she ever
19 did an evaluation where we would have gotten a force
20 order and did not.

21 Q. Is it ever appropriate to ask for a force
22 order before writing a report?

23 A. Is it ever appropriate to ask for one?

24 Q. Let me make sure I have the question right.

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1 Is it appropriate to ask for a force order
2 before writing a report in opining on fitness based on
3 records alone?

4 A. Yes, I think that's appropriate.

5 Q. When?

6 A. Well, I think I outlined the situation. If
7 you made -- if the clinicians have made multiple,
8 whatever that is, typically two to three attempts -- did
9 you ask about getting a force order before getting
10 records?

11 Q. Yes.

12 A. I think it's appropriate. I don't think it's
13 inappropriate to ask for a force order. I don't know if
14 the judges would grant it if records had not been
15 obtained. But it's the judge's discretion. We do not
16 tell the judge to issue a force order. It's a
17 suggestion. There have been cases where judges have
18 issued the force order of their own initiative because
19 defendants have refused to come in, and the judges were
20 frustrated.

21 MS. HAGAN: I'm going to show you what will
22 be marked as Plaintiff's Exhibit 17.

23

24 (Plaintiff's Exhibit 17, DOCUMENT BATES

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1 STAMPED NYC_1914 through NYC_1915, was
2 marked for identification.)
3

4 Q. And Plaintiff's Exhibit 17 bears the Bates
5 Stamp Series NYC_1914 through NYC_1915. Do you see
6 that?

7 A. No, I don't see it.

8 Q. Let me share. Now, do you see it?

9 A. Yes.

10 Q. And for purposes of the record, the email
11 starts at the top with -- it's from Dr. Kaye to an
12 slaird@nyccourt.gov, and it CC's yourself. Now, I'm not
13 sure who Ms. Laird is. Do you recall?

14 A. No. I don't actually recall who that is.

15 Q. So let's go down to the beginning, so you can
16 get a full context. Would that be fair?

17 A. Sure.

18 Q. Okay. So the email starts from a Wanda
19 Roberts to Ms. Persaud. And it's regarding a CHS730
20 request. The subject is medical record. And it says,
21 "Good afternoon, Lucrecia. Please review attached
22 medical records for Mr. This is part one of the medical
23 records. Thank you." You see that; right?

24 A. Yes.

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1 Q. And it's dated February 2nd, 2018.

2 Then we scroll -- we scroll up, and then Ms.
3 Persaud sends you an email. I guess it must be with the
4 medical records, Dr. Winkler. You see that; right?

5 A. Yes.

6 Q. And then you respond to Dr. Kaye and
7 Ms. Persaud and you say specifically -- you say, "Hi,
8 Lucrecia. Please advise Ms. Roberts that these records
9 are useless. They're redacted and do not include an
10 attestation/certification, which we need for the court.
11 Please advise her that we require un-redacted certified
12 records as soon as possible, since the court is
13 questioning the delay in this case." Do you see that;
14 right?

15 A. Yes.

16 Q. And then Dr. Kaye writes to Ms. Laird, and
17 she tells the court -- I guess she works for the courts.
18 "They're still receiving these redacted records from
19 CHS, despite judicial orders for un-redacted records."
20 Do you require -- do you remember judicial orders for
21 un-redacted records coming to -- to the court clinic?

22 A. I remember we were preparing orders at one
23 point. It never said redacted records. And at one
24 point, we actually put in the wording, which I think I

1 mentioned earlier, that we wanted, specifically,
2 non-redacted records.

3 Q. Now, did you ever raise these concerns --
4 well, at this time, you know, Dr. Jain hadn't been
5 working there, but Dr. Ford was definitely around. Did
6 you ever bring issues to Dr. Ford and/or Dr. MacDonald
7 about the continued production of redacted records?

8 A. I don't remember ever raising anything with
9 Dr. MacDonald, but I believe we had a discussion about
10 it with Dr. Ford.

11 Q. And who is we?

12 A. That would have been Dr. Kaye and I.

13 Q. And how did that discussion go?

14 A. I don't remember.

15 MS. CANFIELD: Objection to form. You can
16 answer.

17 A. Yeah, I don't remember any specific
18 discussion, but I'm assuming that it would have been
19 discussed with Dr. Ford, since it was a significant
20 problem.

21 Q. Did Dr. Ford tell you that she would do
22 anything about the problem?

23 A. I -- I don't recall what she said.

24 Q. Did Dr. Ford have a position regarding the

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1 medical records?

2 A. I don't recall. I actually don't recall if
3 she had a position. I don't believe she had a position
4 supporting redacted records, but I don't honestly
5 recall.

6

7 (Plaintiff's Exhibit 18, DOCUMENT BATES
8 STAMPED NYC-1924 through NYC-1925, was marked
9 for identification.)

10

11 Q. I'm going to show you what's marked as
12 Plaintiff's Exhibit 18. Plaintiff's Exhibit 18 bears
13 the Bates Stamp Series NYC-1924 through NYC-1925. And
14 I'm going to share the screen. And for purposes of the
15 record, Exhibit 18 -- at the top of Exhibit 18 is an
16 email from Dr. Kaye to you, Dr. Winkler. And it's dated
17 February 23rd, 2018. You see that; right?

18 A. Yes.

19 Q. Again, I'm going to scroll down to the
20 beginning, so you can get the full context. Apparently,
21 this is an email from Dr. MacDonald to an Elizabeth
22 Moreira. Do you know who Ms. Moreira is?

23 A. She was -- I'm not sure of her current job.
24 She was a -- an administrator -- a kind of an

1 administrative supervisor on the forensic unit at
2 Bellevue.

3 Q. Okay. And Dr. MacDonald says, "Hi, Liz. Can
4 you share with me the records you received for the cases
5 that Dr. Kaye could not complete? Thanks, Ross." You
6 see that; right?

7 A. Yes.

8 Q. And then -- now, do you recall any kind of
9 correspondence or any kind of inquiry from Dr. MacDonald
10 regarding any case you say you couldn't complete because
11 of the record?

12 MS. CANFIELD: Objection as to form. He can
13 answer. It assumes facts.

14 A. I don't recall any conversation with him, no.

15 Q. Okay. Now then, Ms. Moreira says to Dr.
16 MacDonald: "It would have to be requested from the
17 clinic itself. I can copy Melissa and the ACM, if you'd
18 like." The ACM, who do you recall -- who is that?

19 A. I think that would be Lucrecia Persaud,
20 Assistant Coordinating Manager, I think that was her
21 title.

22 Q. Okay. I wasn't sure. But then, Dr.
23 MacDonald says, "Yes, please, to Ms. Moreira." You see
24 that; right?

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1 A. Uh-huh. Yes.

2 Q. And then Ms. Moreira responds back to Dr.
3 MacDonald, Dr. Kaye, and Ms. Persaud. And she says. "No
4 problem. Do you have the defendant's name for the case
5 in question? I have copied Dr. Melissa Kaye and
6 Lucrecia Persaud to this email. To set some context,
7 Dr. Ross MacDonald of CHS is trying to work on the
8 redaction issue and is requesting to see the version of
9 records we have received for outstanding cases in which
10 were redacted and therefore, left an opinion
11 un-rendered." Do you -- you weren't here on that CC
12 just yet. But do you remember seeing this at any point?

13 A. I don't remember it, no.

14 Q. So let's scroll up further. Eventually, Dr.
15 Kaye sends this to you. Do you recall Dr. MacDonald
16 being involved and discussing the redacted medical
17 records issues with you around this time?

18 A. I don't recall it. I see the email, but I
19 don't recall it.

20

21 (Plaintiff's Exhibit 19, DOCUMENTS BATES
22 STAMPED NYC_137 THROUGH NYC_138, was marked
23 for identification.)

24

1 Q. Exhibit 19 bears the Bates Stamp Series
2 NYC_137 through NYC_138. Before we get into that, I
3 would like to just follow up with the last discussion on
4 Dr. MacDonald. Do you recall Dr. MacDonald demanding
5 that Dr. Kaye release records to him that date the Bronx
6 Court Clinic obtained their judicial subpoena for purposes
7 of a CPL 730 exam?

8 MS. CANFIELD: Objection as to form. What?

9 Q. I don't recall that, no.

10 MS. CANFIELD: What are the Bates stamps?

11 MS. HAGAN: NYC_137 to NYC-138.

12 MS. CANFIELD: Thank you.

13 Q. And for purposes of the record, the document
14 is from Dr. Kaye to a Ginger James at the Bronx DA, an
15 S. Gardner at the court, yourself, Dr. Winkler, and
16 Mr. Persaud. Subject, "A Subpoena for Appearance and
17 Notes." And I'm going to go to the bottom of the
18 exhibit and give you an opportunity to look at the
19 context. So Ms. Persaud sends an email to Dr. Kaye on
20 March 15th, with FYI, subpoena for appearance and notes.
21 You see that, right, Dr. Winkler?

22 A. Yes, I see it.

23 Q. And then Dr. Kaye sends a response to an S.
24 Gardner and a Ginger James at the Bronx DA. She has a

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1 question mark. And then she says, "Please note, as
2 previously discussed, there are serious HIPPA
3 restrictions and concerns regarding defendant's medical
4 records. The Bronx Court Clinic can only release
5 medical records and other materials by judicial
6 subpoena. If ADA Mortorno has further concerns or
7 questions, she may contact H&H legal department or the
8 court directly." Do you remember that?

9 A. I don't remember this specific instance, but
10 I remember these types of things coming up.

11 Q. Okay. So then Ms. Ginger -- who is Ms.
12 Ginger at the DA's office?

13 A. Ginger James was ADA -- an ADA. I forget. I
14 think she had a supervisory position at some -- at some
15 level. I forget exactly what it was.

16 Q. Okay. And she then responds, "Thank you for
17 reaching out to me, Dr. Kaye. The subpoena was signed
18 by a judge, and it is returnable to the court. Is there
19 still an issue?" Right? And then there's another
20 response from Dr. Kaye, and it CC's you. "It would be
21 problematic for us to disseminate HIPPA-protected
22 information we obtained by judicial order to the DA or
23 defense directly." Now, did you agree with this
24 position?

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1 A. Yes.

2 Q. Okay. Why?

3 A. Because we are -- even though the clinic may
4 be HIPAA-exempt, that information was supplied to us by
5 judicial order. We are not allowed to then turn around
6 and share it with somebody else without another order.

7 Q. Now, would -- would Dr. Kaye asserting this,
8 be a part of her job?

9 A. I would say it is, because the DA's office
10 asked for the records, and she needs to respond.

11 Q. But then the DA's office also says that the
12 judge had signed an order to this effect. Would that
13 still be part of Dr. Kaye's job to continue to point out
14 that this would be a problem?

15 MS. CANFIELD: Objection to form. You can
16 answer.

17 A. Yes, I think it would be.

18 Q. And what's that based on?

19 A. I think I just said that we are not allowed
20 to share the records -- the judge -- when we get a
21 judicial order, the records are specifically to provide
22 this information about the defendant for the -- in this
23 case Bronx Court Clinic. It's not Bronx Court Clinic
24 and anybody else who needs it. So those records are

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1 issued by judicial order directly to us. And we are not
2 allowed to then turn around and give them to somebody
3 else, unless there's another judicial order saying,
4 okay, Bronx Court Clinic, you can now turn those records
5 over to, for example, the DA's office.

6 Q. So then she says, "We can and will send the
7 records we used to complete our exam and our notes
8 directly to the court on Monday. This is a serious and
9 sensitive issue, and we do not want to violate the
10 defendant's privacy rights or the initial intent of the
11 original order. Thank you for understanding."

12 Now -- now, did you believe that this was a
13 serious and sensitive issue, Dr. Winkler?

14 A. Yes.

15 Q. Okay. And did you believe the defendant's
16 privacy rights could have possibly been violated?

17 A. Yes.

18 Q. Now, Dr. Winkler, at any point, did you read
19 Dr. Kaye's lawsuit?

20 A. Did I read it?

21 Q. Yes.

22 A. No.

23 Q. So you've never read Dr. Kaye's lawsuit
24 against CHS and -- and any of the defendants?

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1 A. No.

2 Q. Why not?

3 A. I just never have.

4 Q. But why? I'm asking you why?

5 A. I've been very busy with my job and certain
6 issues in my personal life and just never took the time
7 to read it.

8 Q. Did you discuss it with Dr. Kaye at any
9 point?

10 A. I think at some point, she mentioned to me
11 that she had filed the lawsuit, yeah, when we were
12 speaking. We haven't spoken in a while.

13 Q. Do you know why?

14 A. No. I don't know why we haven't talked, but
15 I know she had told me that she filed a lawsuit.

16 Q. And what was your reaction to that?

17 A. I didn't necessarily have a reaction. If she
18 feels she has legitimate claims, then she's pursuing her
19 legal options.

20 MS. HAGAN: Why don't we take a break.

21

22 (Recess taken at 4:44 p.m. until 4:55

23 p.m.)

24

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1 BY MS. HAGAN:

2 Q. So Dr. Winkler, I wanted to talk to you about
3 an incident that involved an Officer Ross. Do you
4 recall anything to that effect?

5 A. What was the officer's name?

6 Q. Officer Ross. It was a CO and an inmate that
7 may or may not have been properly restricted during the
8 course of an examination. Do you recall that?

9 MS. CANFIELD: Objection to form.

10 A. No. Not offhand, no.

11

12 (Plaintiff's Exhibit 20, DOCUMENT BATES
13 STAMPED NYC-1990 to NYC-1992, was marked for
14 identification.)

15

16 MS. HAGAN: So I'm going to -- I'm going to
17 bring up what's marked as Plaintiff's Exhibit 20.
18 And it bears the Bates Stamp Series -- it bears
19 the Bates Stamp Series NYC-1990 to NYC-1992. I
20 want to make sure I have the right number. And
21 I'm not sure if you want to go through the actual
22 letter, but it's from -- it appears to be from
23 Mr. Bloom to Captains Jones and Lynch. Do you
24 recall -- do you know who these two individuals

1 are?

2 A. Which two individuals are you referencing?

3 Q. Captains Jones and Lynch.

4 A. Captains Jones and Lynch. No, I don't.

5 Q. Okay. Now, you do remember working with Jeff
6 Bloom; right?

7 A. Yes, I know Mr. Bloom.

8 Q. Okay. So on May 4th, 2018, Mr. Bloom says
9 that he's writing to inform you about an incident that
10 took place on May 2nd at 215 East 161st Street,
11 specifically on the third floor where the psychiatric
12 examinations take place. My client, Mr. Was being
13 examined by Doctors Kaye and Winkler.

14 The examination had been ordered by a judge.
15 When we entered the DOC area, Officer Ross asked that
16 we show her our identification. Each of us complied
17 with her request. We then entered area -- interview
18 area; whereupon, the doctors commenced their
19 examination. While I am not personally familiar with
20 DOC security protocol, I have always observed the
21 officers assigned to that particular tour perform their
22 duties in much the same way. When we entered the
23 interview area, the defendant is always seated on the
24 wooden bench against the wall, so that she is facing

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1 the door. The defendant's left wrist is always cuffed
2 to the wall. At the conclusion of the interview, we
3 leave the interview room, the doctor signs the papers
4 for the officer, and we are then let out of the DOC
5 area. The officer closes and locks the door when we
6 leave. On May 2nd, the officer, upon completion of the
7 examination asked doctors to sign the paperwork. They
8 complied. The officer then entered the interview room,
9 leaving us in the out -- outer area. When one of the
10 doctors asked the officer to let us leave before she
11 uncuffed the defendant from the wall, the officer said
12 no. She then uncuffed him from the wall and cuffed him
13 -- cuffed him behind his back. Had he decided to do
14 so, the defendant could have run anywhere in the area
15 and could have caused serious physical injury to one of
16 us or to himself.

17 Now, do you recall anything like that happening?

18 A. Yes, I recall the incident now.

19 Q. Okay. So what happened?

20 A. It's exactly as stated in the letter,
21 actually.

22 Q. Did you think that Mr. Bloom and/or Dr. Kaye
23 were being unfair by writing this up?

24 A. No.

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1 Q. Did you believe that Dr. -- Dr. Kaye or Dr.
2 Bloom fostered a kind of like an adversarial or we're
3 coming to get you kind of atmosphere in the Bronx Court
4 Clinic?

5 MS. CANFIELD: Objection as to form. You can
6 answer.

7 A. We're coming to get you as to who, to anybody
8 they interacted with or DOC?

9 Q. Well, just anyone who may not have been part
10 of the Legal Aid Society, or I guess, had some level of,
11 I guess, familiarity with Dr. Kaye?

12 A. No. I don't -- I don't have that -- I don't
13 think that's what was happening, no.

14 Q. Did Dr. Kaye and/or Mr. Bloom target people?

15 MS. CANFIELD: Objection to form. You can
16 answer.

17 A. Target people in what way?

18 Q. Well, target any -- let's start with -- did
19 they target any other forensic evaluators with any kind
20 of reprisal or any kind of hostility?

21 MS. CANFIELD: Objection to form. Are we
22 talking post or pre-CHS? You can answer, if you
23 can.

24 A. I don't have any knowledge of any of that.

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1 Q. Ever; is that right?

2 MS. CANFIELD: Objection to form. You can
3 answer.

4 A. Not to my knowledge.

5 Q. Okay. Now, did any of the other center
6 directors approach you or talk to you, Mr. Winkler,
7 about not wanting to work with Dr. Kaye?

8 MS. CANFIELD: Objection to form. You can
9 answer.

10 A. Not that I recall.

11 Q. Was anyone intimidated by Dr. Kaye?

12 A. Intimidated?

13 Q. Yes.

14 A. What do you mean by "intimidated"? Like the
15 (indiscernible) intimidated?

16 Q. Of the dictionary definition, nothing --
17 nothing special. You know, sorry.

18 A. No one has ever told me that they were
19 intimidated by Dr. Kaye.

20 Q. You were not intimidated by Dr. Kaye; right?

21 A. No.

22 Q. Did Dr. Kaye ever yell at you, Dr. Winkler?

23 MS. CANFIELD: Objection to form. He can
24 answer.

1 A. No. I don't recall yelling. We would have
2 -- there were times we didn't agree on a case or
3 procedure. We would discuss it. I never -- I was never
4 yelled at.

5 Q. Now, wasn't it particularly difficult to
6 staff the Bronx Court Clinic in general?

7 MS. CANFIELD: Objection to form. Again,
8 when?

9 A. Right. When are you talking about?

10 Q. Okay. When CHS took over the clinic, was it
11 difficult for -- was it difficult to staff the court
12 clinic?

13 A. I -- I don't know about staffing and
14 difficulties with the clinic, because I wasn't there
15 anymore. I went to Brooklyn. So I don't know if it was
16 difficult or what was going on with the staffing.

17 Q. Now, do you recall when Dr. Brayton resigned
18 from the clinic?

19 A. I -- I don't necessarily recall. I think it
20 might have been -- I don't know, maybe it was the end of
21 2018. I honestly don't recall.

22 Q. Would it be fair to say it was around
23 November of 2019?

24 A. I don't know.

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1 Q. And -- and do you remember when Dr. Kaye
2 resigned from CHS?

3 A. I think it was early 2020. I don't recall
4 that either, exactly.

5 Q. Was there a time period between the time Dr.
6 Brayton resigned and Dr. Kaye resigned, where Dr. Kaye
7 wasn't seeing any 730s?

8 A. I don't know.

9 Q. Were you being called up to the Bronx to
10 provide assistance in completing 730s during that time
11 period?

12 A. I was sent to the Bronx at some point to do a
13 case, might have been two cases. But I don't recall --
14 I don't recall when that was.

15 Q. Okay. Was there ever a work stoppage, to
16 your knowledge, in the Bronx Court Clinic between
17 November of 2019 and January of 2020?

18 A. I'm not aware of a work stoppage, no.

19 Q. Were you aware of defendants that would
20 normally be produced in the Bronx Court Clinic being
21 produced elsewhere during that time period?

22 A. I don't know if there was a defendant --
23 there could have been a defendant produced in Queens. I
24 have some recollection of that, but I'm not positive.

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1 Q. Were you -- were you aware of any backlog
2 that may have been in place at that time between
3 November of 2019 and January 2020?

4 A. I'm not aware of any backlog.

5 Q. Were you aware of any discussions of
6 approximately 40 cases that may not have been seen in
7 the Bronx during that period of time?

8 A. I recall now. I think -- I do recall hearing
9 something about that. I think Jeff Bloom raised that or
10 mentioned that it was something that he was concerned
11 about, I believe.

12 Q. Do you know if that was true, what he was
13 raising issues about?

14 A. I don't know if it was true, no.

15 Q. Did you know Mr. Bloom to write things that
16 were not true?

17 A. No, not --

18 MS. CANFIELD: Objection to form. You can
19 answer.

20 A. Not in my experience.

21 Q. All right. So it wasn't your experience that
22 he did write untruthful things. How would you
23 describe working with Jeff Bloom?

24 A. I enjoyed working with Jeff Bloom. I thought

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1 he was a good attorney and very easy to work with.

2 Q. Okay. And how would you describe his quality
3 of work?

4 A. Very good. I think he's a very good attorney
5 and always came very prepared to our evaluations.

6 Q. And would you say that he -- he was fair in
7 his dealings with CHS staff?

8 MS. CANFIELD: Objection as to form. You can
9 answer.

10 A. He was always fair, I felt, in his dealings
11 with me.

12 Q. Okay. Do you think that he was fair with
13 anyone else?

14 A. Not that I ever noticed or observed.

15 Q. Did you ever hear complaints about
16 Mr. Bloom's behavior towards CHS staff?

17 A. No, I don't recall hearing any complaints
18 about him.

19 MS. HAGAN: I'm going to show you what will
20 be marked as Plaintiff's Exhibit 21. Plaintiff's
21 Exhibit 21 bears the Bates Stamp Series NYC_2739.

22

23 (Plaintiff's Exhibit 21, DOCUMENT BATES

24 STAMPED NYC_2739, was marked for

1 identification.)

2
3 Q. And now, it's Bates stamped series NYC-2739.
4 And do you see the document that I'm referencing, Dr.
5 Winkler?

6 A. Yeah, I see it now.

7 Q. And the email starts with Ms. Swenson
8 emailing Dr. Kaye, Dr. Jain, and Clarence Muirjr. And
9 the subject, "Question." She says, "Hello. I had a
10 question come up regarding who is permitted to attend
11 730 examinations in the Bronx. I understand that the
12 general policy is that only attorneys are allowed to sit
13 in. Would you have something in writing reflecting
14 that? I'd like to add support to the policy. So any
15 written information would be helpful." You see that;
16 right?

17 A. Yes.

18 Q. Now, what was your dealings with Ms. Swenson?

19 MS. CANFIELD: Objection. You can answer.

20 A. Well, Ms. Swenson is the administrative
21 supervisor -- she's the supervisor for the clerical
22 personnel for each of the court clinics. So I sometimes
23 deal with her if I have questions about -- that are
24 clerical, staff.

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1 Q. Did you sign off on your clerical staff time
2 sheets?

3 A. No, I don't.

4 Q. And did you ever, since you have ever been at
5 the Brooklyn Court Clinic?

6 A. No.

7 Q. Okay. Now, for your -- for the clinicians at
8 the clinic, do you just sign off on their time sheets?

9 A. No. I don't sign off on their time sheets
10 either, because they have some kind of computer issue.
11 So actually, Dr. Weisman has to sign off on them.

12 Q. And -- and has this been the case of you not
13 signing off any of the clinician's time sheets since
14 you've been director at the Brooklyn Court Clinic?

15 A. Yes.

16 Q. Do you evaluate the other clinicians on site?

17 A. When you say "evaluate," do you mean do I
18 have to prepare an annual evaluation form?

19 Q. Yes.

20 A. There was one year -- I believe it was one
21 year we were required to complete annual evaluations,
22 but then that has not been continued after that one time
23 that we did it.

24 Q. Okay. And then, did Dr. Kaye ever complain

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1 to you that her managerial job functions had been taken
2 away from her?

3 MS. CANFIELD: Objection to form. You can
4 answer.

5 A. Can you give me some more specifics?

6 Q. Like, for example, it was my understanding
7 that at some point that Dr. Kaye managed Ms. Persaud.
8 Is that your understanding too?

9 MS. CANFIELD: Objection to form. When? You
10 can answer.

11 A. I believe that prior to the CHS takeover,
12 that the clerical staff of each clinic was directly
13 supervised by the clinic director. So then yes, Dr.
14 Kaye would have supervised Ms. Persaud.

15 Q. Now, do you, as a manager of the Brooklyn
16 Court Clinic have, I guess, access to the calendars of
17 the staff and the administrative staff and clinicians at
18 the clinic?

19 A. You mean the assigned case -- their assigned
20 cases, that calendar?

21 Q. Yes.

22 A. Yes, I do.

23 Q. Did Dr. Kaye ever complain to you that she
24 didn't have access to the calendar at her -- at her

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1 clinic?

2 MS. CANFIELD: Objection. You can answer.

3 A. I -- I think she did say that at one point.
4 Yes, I do seem to recall that.

5 Q. So she complained about having access to the
6 calendar. Do you recall how it was resolved, if it was
7 resolved?

8 A. I don't know. I don't recall, or I'm not
9 sure I even know how it was ever resolved.

10 Q. Now, was there ever a time where a Lorraine
11 McEvelley asked specifically that you conduct an exam
12 with Dr. Kaye?

13 A. I do recall that, yes.

14 Q. Do you remember exactly what the
15 circumstances were or somewhat what the circumstances
16 were?

17 A. I -- I don't -- I don't. If you can give me
18 some more specifics that might refresh me if I do --

19 Q. Sure.

20 A. -- have a memory of that.

21 MS. HAGAN: So why don't we do this? I'm
22 going to show you a document, what will be
23 Plaintiff's Exhibit 22. Right. And Plaintiff's
24 Exhibit 22 bears the Bates Stamp Series NYC_3036

1 and NYC_3037.

2
3 (Plaintiff's Exhibit 22, DOCUMENT BATES
4 STAMPED NYC_3036 and NYC_3037, was marked for
5 identification.)
6

7 Q. You see that; right?

8 A. Yes, I do see it.

9 Q. Okay. And for purposes -- I'm going to
10 scroll down so you can see the beginning of the thread.
11 Okay. So the email starts from -- it starts with Dr.
12 Kaye emailing Ms. Persaud, Dr. Jain, Dr. Brayton, and
13 Ms. McEvelley. You see this; right?

14 A. Yes, I see it.

15 Q. And in the subject is "Split Finding Parole
16 Case Third Evaluator Needed." Do you see this?

17 A. Yes.

18 Q. And it says, "Hi, Lucrecia, will need a third
19 evaluator to complete the CPL 730 exam due to a split
20 finding. Please coordinate with Dr. Jain to assign a
21 third evaluator." You see that; right?

22 A. Yes.

23 Q. And then I would like to ask you: How often
24 did you deal with Ms. McEvelley? I guess it says here,

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1 she's the director of the parole revocation defense unit
2 at Legal Aid Society. Prior to you going on to become
3 the director of the Brooklyn Court Clinic, how often
4 would you interact with Ms. McEvilley?

5 A. I interacted with Ms. McEvilley fairly
6 regularly. She would sit in on any parole violation
7 cases where a competency evaluation had been ordered.

8 Q. Okay. And what was your working relationship
9 like with Ms. McEvilley?

10 A. Very good.

11 Q. What did you think of Ms. McEvilley?

12 A. I liked Ms. McEvilley. I think she's a very
13 good lawyer, very bright.

14 Q. Okay. And did you think she treats the
15 staff, while you were there, fairly?

16 A. Yes.

17 Q. Okay. So would you describe your
18 relationship or her relationship with any of the staff
19 as contentious?

20 MS. CANFIELD: Objection to form. You can
21 answer.

22 A. No, I would not describe it as contentious.

23 Q. Or hostile?

24 MS. CANFIELD: Objection to form. You can

1 answer.

2 A. No, not hostile.

3 Q. Okay. So Ms. McEvilley writes to Dr. Kaye
4 and Ms. Persaud, Dr. Jain, and Dr. Brayton again, and
5 she says, "Good morning. Regarding the split finding
6 with one of the parole cases, since a third evaluator is
7 needed, I ask that the third evaluator be someone other
8 than Dr. Jain. It is my understanding that a forensic
9 competency evaluator cannot be a direct supervisor of
10 the second evaluator. And since Dr. Brayton is one of
11 the evaluators on this case, and Dr. Jain is her direct
12 supervisor on this case, due to the Bronx Court Clinic
13 director, Dr. Kaye, being one of the other evaluators,
14 there would be an appearance of a conflict of interest
15 for Dr. Jain to be assigned as the third evaluator in
16 this matter." Did you agree with Ms. McEvilley on this
17 point?

18 A. I agree that a supervisor of another
19 clinician should not be the second evaluator on a
20 competency evaluation.

21 Q. So you agree with her?

22 A. Yes, I agree with her.

23 MS. CANFIELD: Objection.

24 Q. Then she says, "I request that if possible,

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1 Dr. Barry Winkler, be third evaluator. I am familiar
2 with his work, and I feel confident in his skill set and
3 integrity. I am available to come to the Brooklyn Court
4 Clinic to sit in on this case, if that would help
5 facility the examination. I guess she meant
6 "facilitate."

7 Now, Dr. Winkler, did you think that Ms.
8 McEvilley may have been overstepping her bounds by
9 requesting that you specifically sit in on the exam?

10 A. No. I think she's allowed to make a request
11 such as that. I don't think it's overstepping.

12 Q. At any point, did Ms. McEvilley or anyone
13 else state that Dr. Brayton was being remediated?

14 A. No.

15 MS. CANFIELD: Objection to form.

16 Q. Did at any point, did anyone -- did Ms.
17 McEvilley or anyone else state that Dr. Brayton was
18 being remediated?

19 A. I know that Dr. Brayton, at some point,
20 underwent additional training. I believe the word
21 "remediated" might have been used at some point.

22 Q. Who would have possibly used that word; do
23 you know?

24 A. I'm not sure.

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1 Q. Would "remediated" have been the appropriate
2 word?

3 A. I'm not exactly sure of the -- I'm not sure
4 of the exact definition of remediate. But my
5 understanding was that she was receiving additional
6 training.

7 Q. Okay. Thank you.

8 Now, was there ever a time where the person
9 designated to do Dr. Brayton's performance evaluation
10 became an issue?

11 MS. CANFIELD: Objection to form. You can
12 answer.

13 A. I don't know. I don't recall.

14 Q. You're not sure?

15 A. Yeah.

16 MS. HAGAN: So let's -- let's start with the
17 -- just a little bit of an overview, so we could
18 have a clear record regarding Dr. Brayton's tenure
19 at CHS.

20 So this will be Plaintiff's Exhibit 23?

21
22 (Plaintiff's Exhibit 23, DOCUMENT BATES
23 STAMPED NYC_2153, was marked for
24 identification.)

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1 Q. And Plaintiff's Exhibit 23 bears the Bates
2 Stamp Series NYC_2153. And it's dated October 10th,
3 2018. And I'm going to share the screen, because I'm
4 not sharing it apparently. And now, can you see the
5 exhibit?

6 A. I see it.

7 Q. Okay. So on October 10th, 2018, Dr. Kaye
8 emails you, Dr. Winkler, Dr. Mullan, and Ms. Persaud.
9 And the subject is "Psychological Testing Referral, DD."
10 Is that the initial of a defendant?

11 A. I'm assuming that it is.

12 Q. Okay. She says, "Hi, Barry. We need
13 malingering testing on (redacted). He presented in
14 somewhat of a spurious manner with possible delusional
15 material, but it seemed overdone. We need collateral
16 data to call it and for report preparation. Perhaps,
17 you can use this as a training case for Dr. Brayton, and
18 she can do the testing and write up, the psychological
19 testing report." You see that; right?

20 A. Yes.

21 Q. Now, would you say this is fairly early on in
22 Dr. Brayton's tenure? This is October 2018; right?

23 A. Yes.

24 Q. So would you say this is around the time that

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1 Dr. Brayton started at the court clinic?

2 A. Yes, I believe it was.

3 Q. And would you say that Dr. Kaye was being
4 helpful that -- suggesting that the testing -- that, you
5 know, that she can take part in the testing of this
6 particular defendant at this time?

7 A. Yes.

8 Q. Okay. So then, you respond to Dr. Kaye:
9 "That's a good idea. I put him on tentatively for
10 Friday, October 26. I've cc'd Anansa on this email, so
11 she can confirm that she will be available that day."
12 You see that; right?

13 A. Yes.

14 Q. And she was there, of course; right?

15 A. Yes.

16 Q. How did this go when she sat in on that
17 training on that day?

18 A. I don't remember what happened with that
19 case, honestly. I don't remember if she did the testing
20 and did a report. I don't recall.

21 Q. Now, when you trained Dr. Brayton, was she
22 receptive to your critique and/or assessment of her
23 work?

24 A. Yes. I would say she was receptive.

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1 Q. But she was not receptive to Dr. Kaye's
2 assessment of her work; would that be accurate?

3 MS. CANFIELD: Objection to form. You can
4 answer.

5 A. I don't know. I can't speak to whether she
6 was receptive to Dr. Kaye or not. I don't know.

7 Q. Well, you testified earlier that Dr. Brayton
8 articulated to you that Dr. Kaye did not like how she
9 wrote her reports; right?

10 A. Did not like how she conducted her interviews
11 in particular.

12 Q. And did you like the way Dr. Brayton
13 conducted her interviews?

14 MS. CANFIELD: Objection. Asked and
15 answered. You can answer.

16 A. I did not -- I felt that she asked some
17 questions that didn't need to be asked.

18 Q. Did you tell Dr. Brayton as much?

19 A. I believe I did discuss it with her.

20 Q. And how did Dr. Brayton react?

21 A. She was receptive.

22 Q. Did she alter or modify how she conducted the
23 interview that you gave her your case?

24 A. She did not alter it significantly, no.

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1 Q. And how did you react that she continued to
2 do whatever she did?

3 A. I reinforced it with her again.

4 Q. And then what happened?

5 A. Well, I did not do that many interviews with
6 her. That would have been towards the end of her
7 training with us. And then I think not long after that,
8 she went up to the Bronx.

9 Q. Okay. Now, you said that at times, her
10 reports had some deficiencies. Would that be accurate?

11 A. Yes, that's accurate.

12 Q. Now, did you identify these deficiencies to
13 Dr. Brayton?

14 A. Yes. I made corrections on some of her
15 reports.

16 Q. And how did she react when you made these
17 corrections?

18 A. She was receptive.

19 Q. Did she try to improve upon her report
20 writing abilities after you critiqued her?

21 A. I think she tried.

22 Q. She tried. What happened? When you say,
23 "She tried," it suggests she wasn't successful. What
24 happened?

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1 MS. CANFIELD: Objection to form. He can
2 answer.

3 A. Her report quality, in my opinion, did not
4 improve drastically.

5 Q. And was it detrimental for her to constantly
6 perform her job?

7 MS. CANFIELD: Objection to form. You can
8 answer.

9 A. I'm sorry. Can you say it again? I didn't
10 get all of it.

11 Q. Are these detriments -- did it impact her
12 ability to constantly perform her job?

13 A. It impacted her ability to clearly
14 communicate her opinion in her report.

15 Q. Was Dr. Brayton competent?

16 A. I think she's competent, but she had some
17 deficiencies that needed to be addressed.

18 Q. I asked you: Did you evaluate Dr. Brayton?

19 MS. CANFIELD: I don't know if the court
20 reporter heard that. It was --

21 THE REPORTER: I got it.

22 MS. HAGAN: I --

23 MS. CANFIELD: I know, but can you just
24 repeat it.

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1 Q. Did Dr. Brayton -- did you evaluate Dr.
2 Brayton?

3 MS. CANFIELD: No. The one before that, the
4 competency.

5 MS. HAGAN: Was Dr. Brayton competent, and he
6 said yes, but she has deficiencies. That's what
7 he said. Isn't that right?

8 MS. CANFIELD: Did you get that.

9 MS. HAGAN: Yes, she got it. Didn't you get
10 that.

11 THE REPORTER: Yes, I did get it.

12 MS. HAGAN: Okay. Thank you. I did not hear
13 it, but --

14 Q. Now, Dr. Winkler, you evaluated Dr. Brayton,
15 didn't you?

16 A. I supervised her work, some of it.

17 Q. At some point, did you complete a performance
18 evaluation for Dr. Brayton?

19 A. I don't recall if I did or not.

20
21 (Plaintiff's Exhibit 24, DOCUMENT BATES
22 STAMPED NYC_1310 and NYC_1311, was marked for
23 identification.)
24

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1 Q. Let me show you what's been marked as
2 Plaintiff's Exhibit 24. Maybe this will help.
3 Plaintiff's Exhibit 24 bears Bates Stamp series]
4 NYC_1310 and NYC_1311. And it starts with an email from
5 Dr. Kaye to Dr. Jain and Dr. Winkler. Do you see this;
6 right?

7 A. Yes.

8 Q. And it's dated February 25th, 2019; is that
9 right?

10 A. Yes.

11 Q. And the subject is "Dr. Brayton's Employee's
12 Performance Evaluation"; right?

13 A. Yes.

14 Q. And I'm going to go to the bottom of it, so
15 you can get the full context. I wouldn't want you not
16 to have that. So at the beginning of this thread,
17 there's an email from Dr. Jain to Dr. Kaye and yourself.
18 And Dr. Jain says, "Hi, Dr. Kaye. Dr. Brayton's
19 employee performance evaluation, blank form attached, is
20 due next Wednesday, February 27. Would you like to
21 complete it or because she has thus far spent more time
22 in Brooklyn than Bronx, would you like Dr. Winkler and
23 me to complete it? Either way should be fine. And even
24 if Dr. Winkler and I formally complete it, we can

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1 certainly incorporate any feedback you have regarding
2 what you have observed of her performance so far. Thank
3 you so much."

4 Now, this is February 22nd, 2019, and we agreed
5 that Dr. Brayton started, perhaps, at court clinic with
6 CHS in the fall of 2018; would that be accurate?

7 A. Yes, I think that's accurate.

8 Q. So we are talking a good, let's say, three
9 months in 2018, another -- so she's been here about five
10 months. Would that be accurate, five or six months;
11 right?

12 MS. CANFIELD: Objection to the form. You
13 can answer.

14 A. That sounds accurate.

15 Q. Okay. Now, I'm going to scroll up. Now, Dr.
16 Kaye responds, "Hi, Beesh. Thanks for reaching out.
17 Dr. Brayton started in the Bronx in mid-December."
18 Would that be accurate?

19 MS. CANFIELD: Objection to form.

20 A. I think --

21 MS. CANFIELD: You can answer.

22 A. I think it is.

23 Q. Okay. "Since that time, as you know, I have
24 Been out due to the unexpected death of my

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1 brother and FMLA to care for my child in the context of
2 the adverse shift change." Do you recall that being
3 some of the circumstances at the time with Dr. Kaye?

4 A. Yes, I do.

5 Q. Okay. As a result, I have not had much
6 opportunity to work with Dr. Brayton. I know Barry
7 supervised and trained her for months in Brooklyn before
8 she was sent to work in the Bronx. At this point, I
9 think it's best that you and Barry complete her
10 performance evaluation. In so doing, please feel free
11 to incorporate the feedback I've given to both of you as
12 you see fit. Anansa approached me last week asking if
13 she could shadow a clinician in an emergency room in
14 order to shore up her clinical skills. I think that
15 experience could be helpful to her, but I told her she
16 would need to pursue approval and logistics of that
17 through you. Thanks, Melissa." You see that; right?

18 A. Yes.

19 Q. Now, in fact, you and Dr. Jain complete an
20 evaluation for Dr. Brayton?

21 A. I may have. I honestly don't remember
22 completing it, if I did.

23 Q. What would you rate Dr. Brayton's performance
24 on?

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1 A. Rating in terms of -- what are the choices?

2 Q. Well, there's fully competent. You know, do
3 you remember the rating for yourself?

4 A. I don't recall the ratings.

5 Q. So you're not sure if you rated Dr. Brayton;
6 right?

7 A. I don't recall.

8 Q. And you're not sure if -- you're not sure
9 what you would have rated her; am I right?

10 A. I don't know what the rating choices were. I
11 don't recall --

12 Q. Did you --

13 A. -- (indiscernible).

14 MS. HAGAN: I decided to modify the question.

15 Q. Would you say that Dr. Brayton was a bad
16 employee?

17 A. Bad employee, no.

18 Q. Would you say that she did not perform the
19 functions of her job in a satisfactory manner?

20 A. I would say she required improvement in how
21 she performed certain functions.

22 Q. Would you have hired Dr. Brayton knowing how
23 she performed?

24 MS. CANFIELD: Objection. Hindsight's always

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1 20/20. You can answer.

2 MS. HAGAN: Yeah.

3 A. If I knew the quality of her work, I probably
4 would not have hired her -- would not hire her now.

5 Q. Okay. Thank you.

6 Now, I'm going to show you what will be
7 marked as Plaintiff's Exhibit 25. Plaintiff's Exhibit
8 bears the Bates Stamp Series NYC_1649.

9
10 (Patient's Exhibit 25, DOCUMENT BATES
11 STAMPED NYC_1647, was marked for
12 identification.)

13
14 Q. I want to make sure this is right, and let
15 me share it with you. And Patient's Exhibit 25 is an
16 email that appears to be Dr. Jain seeking some
17 contribution or some, you know, feedback from you. And
18 it's dated August 27th, 2019. And the subject is
19 "Anansa Supervision." You see that; right?

20 A. I see it.

21 Q. Was this like -- did this happen between you
22 and Dr. Jain fairly frequently, I would say, during the
23 course of his tenure at CHS?

24 A. Did what happen?

1 Q. Did he reach out to you for guidance in
2 managing or writing things to specific employees?

3 A. No, it wasn't a regular thing. I think in
4 this case, since I had done some supervision of Dr.
5 Brayton, that's why he asked me if there was anything I
6 wanted to contribute or change.

7 MS. CANFIELD: I'm sorry. Did you say 1649?
8 It looks like 1647. That's the proper one.

9 MS. HAGAN: I guess it's 1647. That's the
10 proper one.

11 MS. CANFIELD: Thank you. All right. Thank
12 you.

13 MS. HAGAN: Why we modify that for the
14 record. Exhibit 25 is NYC_1647. And just to make
15 sure that we don't miss anything, let's see what
16 1649 says. We can pull that up. For purposes of
17 -- that's an out-of-office email. So I'm not sure
18 that that is for Dr. Winkler. But back to --

19 MS. CANFIELD: Okay. I just wanted to clear
20 this up.

21 Q. So back to 1647. Now that Dr. Winkler had
22 some more time to think, I don't think he needed any,
23 but here it is: "Hi, Barry, I'm going to reach out to
24 Dr. Kaye and CC you. Anything you would like me to

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1 change/add to this email?" And then he writes, "Hi, Dr.
2 Kaye. As we've generally discussed, we would like to
3 continue being available to provide supervision for Dr.
4 Brayton, especially on specific cases in which you may
5 not be able to do so because you are also the
6 co-examiner. I believe Dr. Brayton?

7 Actually has some recent cases she would like to
8 discuss, and I would like -- I will try to meet with
9 her for supervision. Please let us know, and we can
10 also be available by phone if there are any areas which
11 you think it would be useful for us to focus on with
12 her. Thanks so much, Beesh."

13 Now, you know, does the issue -- was there a
14 concern by Dr. Kaye about supervising directly with Dr.
15 Brayton?

16 A. I don't know of any issue other than she --
17 if she was the co-examiner, then as we discussed
18 previously, the supervisor doesn't typically or
19 shouldn't -- couldn't -- the co-examiner should not be
20 supervising the other examiner.

21 Q. Right. Right. So ultimately, was there like
22 any resolution as it -- as it pertained to this issue
23 with Dr. Brayton and Dr. Kaye as far as --

24 MS. CANFIELD: Objection. Objection to form.

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1 MS. HAGAN: I didn't even finish my question.

2 So -- yes.

3 Q. Was there any resolution?

4 A. I'm not sure what you're asking me, if
5 there's any resolution.

6 (Plaintiff's Exhibit 26, DOCUMENT BATES
7 STAMPED NYC_3111 and NYC_3112, was marked for
8 identification.)
9

10 MS. HAGAN: Let's move on. So I'm going to
11 be showing you what's marked as Exhibit 26 --
12 Plaintiff's Exhibit 26, and it bears the Bates
13 Stamp Series NYC_31 -- 3111 and NYC_3112. And I'm
14 going to share it.

15 Q. So here at the bottom of this email, there is
16 -- it's from Dr. Jain to Dr. Kaye and yourself. Again,
17 this is on August 27th. It starts with (indiscernible).
18 Now, do you kind of have to look at this?

19 A. Well, I believe it's the same email that we
20 just reviewed.

21 Q. Right. But then we go up. And then Dr. Kaye
22 responds: "Hi, Beesh. I'm reaching out to follow up on
23 your email about the operations and staffing at the
24 Bronx Court Clinic. And this is on August 28th, 2019.

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1 I'd like to find a time we can meet with Barry to come
2 up with a strategy and to develop our ability in the
3 Bronx to work as a team and discuss your expectations
4 and best practices that you'd like to use in the Bronx."
5 Do you recall that?

6 A. This email do I recall, or do I recall
7 meeting?

8 Q. Do you recall Dr. Kaye trying to meet with
9 the two of you to develop a team strategy on how to
10 supervise Dr. Brayton?

11 A. I remember her talking about wanting to do
12 it, yes.

13 Q. When did -- did the meeting ever take place?

14 A. I don't recall if it did or not.

15 Q. Okay. Then Dr. Jain says, "This is a good
16 idea. Unfortunately, I will not be able to meet today,
17 but we can try to plan something for next week, either
18 an in-person meeting or a phone call if that's more
19 conducive to get things started. In the meantime, on a
20 separate note, would you be available for a brief phone
21 call today to get your input regarding our process for
22 getting records? That's another topic."

23 Now, was Dr. Kaye being reasonable when
24 trying to have a meeting with you to figure out how Dr.

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1 Brayton should be supervised going forward at that time?

2 MS. CANFIELD: Objection to form. You can
3 answer.

4 A. I think that's a reasonable request.

5 Q. Do you believe that Dr. Jain was being
6 cooperative with Dr. Kaye's effort in trying to resolve
7 the issues?

8 A. If I recall, his response was that he said it
9 was a good idea to meet.

10 Q. But did it ever happen?

11 A. I don't recall that it happened.

12 Q. You don't remember either way?

13 MS. CANFIELD: Objection to form.

14 Q. You don't remember if the meeting happened;
15 is that right?

16 A. I don't recall having a meeting.

17 Q. And you don't recall who evaluated Dr.
18 Brayton; is that correct?

19 MS. CANFIELD: Objection to form. You can
20 answer.

21 A. The formal evaluation, I don't recall if I
22 did one for her or not. I know the email says I did, so
23 I assume I did. But I don't recall doing it.

24 Q. You don't recall what you rated her at; am I

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1 right?

2 A. No, I don't recall doing it.

3 MS. CANFIELD: Just note for the record, I
4 don't have a copy of that batch that you sent
5 over. Plaintiff's Exhibit Number 26.

6 MS. HAGAN: I'm not sending anymore because
7 it's there. You have it, you just can't find it
8 right now.

9 MS. CANFIELD: Okay. So I'll assume that you
10 will change your mind, and you'll send it over
11 later, consistent with Judge Cott's --

12 MS. HAGAN: Because it's there in the email.
13 You need to look at your email.

14 MS. CANFIELD: I am looking right now. I've
15 looked twice. It's not there.

16 MS. HAGAN: You are stalling. Please --

17 MS. CANFIELD: I'm actually not. I'm just
18 trying to be -- talking about reasonable. I'm
19 trying to be reasonable here. I don't have a
20 copy. I'm noting it for the record that I don't
21 have a copy.

22 MS. HAGAN: Because it will be a
23 misrepresentation, and if I'm right, I'm going to
24 write the court.

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1 MS. CANFIELD: That's fine. If you're right,
2 I will apologize as you pointed out. I do not see
3 it.

4 MS. HAGAN: Stop it.

5 MS. CANFIELD: Excuse me.

6 Q. Now, Dr. Winkler, I'm going to show you
7 what's going to be marked as Plaintiff's Exhibit 27.
8 Plaintiff's Exhibit 27 bears the Bates Stamp Series
9 NYC_3117 to NYC_3119.

10
11 (Plaintiff's Exhibit 27, DOCUMENT BATES
12 STAMPED NYC_3117 THROUGH NYC_3119, was marked
13 for identification.)
14

15 Q. Do you see that?

16 A. I see an exhibit, yes.

17 Q. Okay. And the record -- and just for the
18 purposes of the record, it is from Dr. Jain to Dr. Ford.
19 And then it's regarding Dr. Brayton's supervision. And
20 it's dated September 5th, 2019. Do you see that?

21 A. Yes.

22 Q. Okay. And I'm going to scroll down to the
23 bottom of the exhibit. Do you see that? I'm going to
24 go back to the bottom of this particular email thread,

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1 not the exhibit. I'm going to be asking about NYC_3119.

2 You see that?

3 A. Yes.

4 Q. Okay. So it's Dr. Jain to Dr. Kaye and Dr.
5 Winkler. And the subject is "Dr. Brayton's
6 Supervision." It says, "Hi, Dr. Kaye. As we've
7 generally discussed, we can continue being available to
8 provide supervision to Dr. Brayton, especially on
9 specific cases in which you may not be able to do so
10 because you are also the co-examiner. I believe Dr.
11 Brayton actually has some recent cases she would like to
12 discuss," and -- you know, and this is an earlier email;
13 right? And then it goes up to Dr. Kaye has read this
14 email already. And go again. And then Dr. Kaye talks
15 about being available to now speak on the phone. Do you
16 see that?

17 A. I see, "Can I call you at 9 a.m. if that
18 still works."

19 Q. And that's Dr. Jain. And then Dr. Kaye says,
20 "I'm leaving for a meeting at Water Street shortly. Can
21 you call now or this afternoon?" And then he says, "We
22 can try this afternoon. No problem." Right? And then
23 Dr. Jain says, "Just as a brief update, as I think you
24 know, I will be helping out and seeing a case with Dr.

1 Brayton next Tuesday." Now, Dr. Jain is Dr. Brayton's
2 supervisor; right?

3 A. He was the supervisor for all the clinics.
4 So yeah, technically, he was one of her supervisors.

5 Q. So wouldn't evaluating a case be problematic
6 in and of itself?

7 A. If he was going to be the co-evaluator and to
8 also supervise her report, then that would be a problem.

9 Q. Yes. "Any supervision on the case, I will
10 suggest to her that she can come to either of you, Drs.
11 Kaye or Winkler, where as needed. Otherwise, looking
12 forward to discussing the plan going forward next week.
13 All the best." Right?

14 Now, then here it is, he says, "He plans on
15 meeting with Dr. Kaye and Winkler to discuss Dr.
16 Brayton's supervision, and let me know if you have any
17 thoughts about this." And then you wouldn't know what
18 transpired there, and you're not sure if this meeting
19 ever took place between the three of you; am I right?

20 MS. CANFIELD: Objection. Asked and
21 answered. He can answer again.

22 A. Yeah. I'm not sure if it ever happened.

23 Q. Okay. Now, at any point, did anyone from the
24 Department of Investigations ever approached you about

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1 complaints involving CHS in the court clinics?

2 A. Not allowed -- not sure if I'm allowed to
3 answer that.

4 Q. You should be.

5 A. I was approached at some point by the
6 Department of Investigation.

7 Q. When was that?

8 A. Recently.

9 Q. How recent?

10 A. I was contacted about a week ago.

11 Q. And what -- to the extent that you can, what
12 did they ask you about, Dr. Winkler?

13 MS. CANFIELD: Objection. I think those
14 investigations are confidential. He's not going
15 to be able to testify to it.

16 A. I'm not going to. They told me it was
17 confidential. I'm not going to share that.

18 Q. It was confidential, but were you ever
19 approached by the Board of Correction?

20 A. Approached, no.

21 Q. Did you receive any correspondence by the
22 Board of Correction?

23 A. There was a complaint -- somebody filed a
24 complaint -- a defendant's family member, at some point,

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1 filed a complaint. This was a Brooklyn case. I think
2 it involved a delay in their family member being
3 released because they claimed a report had not been sent
4 to the court when, in fact, it had, and the court was
5 unable to locate it. That complaint was sent to the
6 Board of Corrections and was eventually passed on or
7 brought to my attention by Dr. Weisman. And I generated
8 a response once I found out that a report had actually
9 been generated and that the court had just been unable
10 to locate it.

11 Q. Now, did the Board of Correction approach you
12 about any of the complaints or any of the issues that
13 Dr. Kaye may have raised during the course of your
14 tenure at CHS?

15 A. No.

16 MS. CANFIELD: Objection. Assumes facts.

17 Q. You said no, right, Mr. Winkler?

18 A. I haven't been approached by Board of
19 Correction. It just was a complaint that filtered down
20 to them.

21 Q. Were you ever approached by the Inspector
22 General's Office?

23 A. No.

24 Q. Okay. And now, at any point, did you

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1 participate in interviewing a Catalina Hackworth,
2 Doctor?

3 A. Yes.

4 Q. So you did; right?

5 A. Yes.

6 Q. And was Dr. Hackworth also retired?

7 A. Yes.

8 Q. Would it be fair to say that Dr. Hackworth
9 started after Dr. Kaye had left the Bronx Court Clinic?

10 A. I don't -- I don't recall exactly when she
11 started, if there was any overlap, or it was after Dr.
12 Kaye left.

13 Q. Would it be fair to say that Dr. Hackworth at
14 the court clinic approximately 13 months?

15 A. I don't know.

16 MS. CANFIELD: Objection to form. I'm sorry,
17 Bronx Court Clinic?

18 Q. Would it be fair to say that Dr. Hackworth
19 worked for CHS for approximately 13 months?

20 A. I don't know how long she worked there.

21 Q. Did Dr. Hack -- was Dr. Hackworth hired to
22 work specifically at a (indiscernible) clinic?

23 A. She was hired to work at the Bronx Court
24 Clinic.

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1 Q. Did she work there for the duration of her
2 employment at CHS?

3 A. Yes.

4 Q. Okay. Now, the pandemic, I guess, started in
5 -- probably in March 2020. Would that be accurate, Dr.
6 Winkler?

7 A. It's when it impacted our operations, yes,
8 March 2020.

9 Q. And how did it impact CHS operation?

10 A. Initially, we worked completely remote from
11 home, five days a week. And then in July, beginning of
12 July, 2020, we began a hybrid schedule of two days in
13 the office per week, three days at home.

14 Q. Were there ever complaints that CHS weren't
15 seeing defendants for 730 examinations during the time
16 -- during the time?

17 MS. CANFIELD: Objection. This was after
18 (indiscernible) case employment; so it's
19 irrelevant to the litigation.

20 MS. HAGAN: You can answer.

21 A. There were delays, initially, in being able
22 to see any defendants because the video teleconference
23 system had to be established. The doctors had to be
24 granted access to the virtual private network in order

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1 to be able to access the share drive where the reports
2 are stored, and IT department took a long time to get
3 that set up quite frankly and running.

4 Q. So when did it become operational, do you
5 know?

6 A. I believe we started to see defendants
7 remotely about two to three weeks after we left the
8 offices and went to full remote from home.

9 Q. When was that?

10 A. March, I believe, 16th was our last day in
11 the office, whatever the Friday is in March. Around the
12 16th was our last day in the office.

13 Q. Now, Dr. Hackworth eventually left in March
14 2021. Would that be accurate?

15 A. She eventually left. I don't remember
16 exactly if it was in March 2021 or not.

17 Q. Do you remember the circumstances that led to
18 her leaving -- leaving?

19 A. She -- my understanding is she got a new job.

20 Q. Now, did you hear anything about Dr. Kaye's
21 resignation from (indiscernible)?

22 MS. CANFIELD: Objection to form. You can
23 answer.

24 A. I was told by Dr. Jain that Dr. Kaye had

1 resigned. I asked him why, he said he didn't know. And
2 that's all I ever heard about it.

3 Q. You didn't -- you didn't hear that Dr. Kaye
4 wasn't allowed to provide two weeks' notice when she
5 resigned. Did you hear that?

6 A. No.

7 MS. CANFIELD: Objection to form. You can
8 answer.

9 A. I did not hear.

10 Q. No; right?

11 A. No. I --

12 MS. CANFIELD: No, he did not hear that.

13 A. I did not hear it.

14 MS. HAGAN: Let him answer the question.

15 Q. He said no, he did not hear that. Is that
16 right, Dr. Winkler?

17 A. That is correct.

18 Q. Okay. Has it ever been your experience that
19 a person would not be allowed to give two weeks'
20 resignation when they resign from the court clinic?

21 MS. CANFIELD: Objection to form.

22 A. I don't know what the normal procedure is
23 when somebody resigns.

24 Q. Has anyone resigned on the same day in your

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1 experience with the court clinic?

2 MS. CANFIELD: Objection to form.

3 A. I haven't been involved in anybody who
4 resigned from the clinic; so I don't know.

5 Q. Well, Dr. Ford was there when Dr. Ford
6 resigned; right?

7 A. Dr. Ford left to go to another job. But I
8 don't know the circumstances about how she left or what
9 happened.

10 Q. Did Doctor -- you're not sure if Dr. Kaye --
11 Dr. Ford left the same day she issued her letter of
12 resignation?

13 A. No, I have no idea.

14 Q. Do you speak to Dr. Ford -- when was the last
15 time you spoke to Dr. Ford?

16 A. I don't even remember. Maybe a couple of
17 months after I went down to Brooklyn. I don't even
18 remember the last time I spoke with her.

19 Q. Are you and Dr. Ford friendly?

20 A. Say that again.

21 Q. Are you and Dr. Ford friendly?

22 A. We are not friends. I haven't spoken to her
23 since she left.

24 Q. Okay. And so you're not aware of any --

1 you're not aware, either way, of any instances where a
2 person would tender their letter of resignation and
3 would be told they have to leave on the spot?

4 MS. CANFIELD: Objection. No foundation.

5 Asked and answered. You can answer it.

6 A. I have not been involved with anyone who
7 resigned or tendered their resignation. I don't know
8 what happened with other people who resigned.

9 Q. Did you ever reach out to Dr. Kaye after she
10 resigned?

11 A. No.

12 Q. Why not?

13 A. I figured if she wanted to speak with me, she
14 would contact me.

15 Q. Weren't you and Dr. Kaye friends?

16 A. Yes, I think we were friends.

17 Q. So you think you were friends, but you didn't
18 reach out to your friend to find out what happened when
19 she left her job?

20 MS. CANFIELD: Objection to form. You can
21 answer.

22 A. I didn't reach out. She left precipitously.
23 I wasn't sure what happened. I didn't get any
24 information. I felt that if she wanted to talk to me

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1 about it, she would contact me.

2 Q. Did you and Dr. Kaye ever socialize outside
3 of work?

4 A. Yeah. There were some times when we did.

5 Q. Can you describe?

6 A. Say it again.

7 Q. Can you describe?

8 A. We had lunch at times. I think we had dinner
9 a couple of times.

10 Q. Did you ever meet Dr. Kaye's children?

11 A. Yes, I did meet her children.

12 Q. And how often would you say you came in
13 contact with her children?

14 A. At one point, I saw them fairly regularly.
15 She lived close to where I lived in Manhattan.

16 Q. So you would see them in the neighborhood?

17 A. Yes, I would see them. I was at her
18 apartment also, where I saw them.

19 MS. HAGAN: So that's all I have.

20 MS. CANFIELD: Okay. I have a couple of
21 questions as follow-up.

22

23 EXAMINATION

24 BY MS. CANFIELD:

1 Q. Dr. Winkler, you testified earlier that you
2 received word that Dr. Yang had called the DA's office
3 to have an inmate removed from Rikers' Island without
4 exam. Who did you receive word from?

5 MS. HAGAN: Objection as to form. Compound
6 question. Leading question.

7 Q. You can answer.

8 A. I don't recall if we received the information
9 from somebody in the DA's office, or it might have been
10 Jeff Bloom. I don't honestly recall who told us that.

11 Q. Okay. Do you know how you were told? Was
12 this in-person?

13 MS. HAGAN: Objection to form.

14 A. I believe we were told in-person.

15 Q. Okay. But you don't recall who, in fact, had
16 told you?

17 A. I don't, no.

18 Q. Is it possible that Dr. Kaye told you?

19 MS. HAGAN: Objection to form. Leading.

20 A. My sense is that it was told to us by
21 somebody and that it was not Dr. Kaye telling me that it
22 happened.

23 Q. And your sense was it someone from Bellevue
24 or was it someone on the defense side?

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1 MS. HAGAN: Objection. Leading.

2 A. I think it was -- my sense was that it was
3 someone in the DA's office that called to tell us it had
4 occurred or that it was defense, probably likely Jeff
5 Bloom who had gotten that information somehow.

6 Q. Okay. And what did you do with that
7 information, if anything?

8 MS. HAGAN: Objection.

9 A. We -- I don't know that we did anything per
10 se, except continue with our normal procedure. We did
11 eventually see that defendant. We were obviously
12 concerned when we heard the information, but we did
13 eventually see that defendant and perform an evaluation
14 on him.

15 Q. Okay. And before you saw the defendant and
16 performed the evaluation, were you told again that you
17 needed to find this person unfit?

18 MS. HAGAN: Objection to form. Assumes facts
19 that weren't established.

20 A. We -- from my recollection, whenever told
21 that we had to find the defendant unfit, we were told
22 that the DA's office had been called by Dr. Yang and
23 asked if the defendant could be found unfit by the DA's
24 office or deemed unfit and moved off Rikers.

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1 A. Okay.

2 Q. So you were told this again right before you
3 were going to see or just this one instance that you
4 already testified to?

5 MS. HAGAN: Objection.

6 A. Just that one instance.

7 Q. Okay. And this particular individual was
8 never removed from Rikers without an examination --
9 examination; is that correct?

10 MS. HAGAN: Objection.

11 A. That's correct. As far as I know, we saw
12 him. We did an evaluation.

13 Q. Okay. I'm sorry.

14 A. He was found fit.

15 Q. Okay. Thank you. You also testified earlier
16 that Dr. Kaye complained to you about not being invited
17 to meetings. Did you ever confirm that she had, in
18 fact, not been invited to meetings?

19 MS. HAGAN: Objection.

20 A. I don't know that she -- I didn't confirm per
21 se with the people who set the meetings up that she
22 wasn't invited.

23 Q. Okay. So it's possible that she was, in
24 fact, invited to these meetings and then for some could

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1 not attend?

2 MS. HAGAN: Objection. Leading. That's not
3 what he testified to.

4 MS. CANFIELD: That's a hypothetical. It's
5 fair.

6 A. It's possible.

7 Q. Do you know when Dr. Kaye talked to you about
8 her shift change, do you know if she grieved this with
9 her union?

10 MS. HAGAN: Objection. No foundation.

11 A. I seem to remember -- I don't know if she
12 grieved it per se, but I seem to remember her saying
13 that she had contacted doctor's counsel about it.

14 Q. And did she ever share with you what the
15 results of that contact was?

16 MS. HAGAN: Objection. Assumes facts that
17 were not in evidence.

18 A. I -- I think she said that they told her they
19 couldn't do anything about it. I don't think she got no
20 satisfaction from it, or they told her she couldn't do
21 anything.

22 Q. Okay. And do you know if Dr. Kaye ever
23 requested to be switched to another line, like say, to
24 be paid by PAGNY like you were --

1 MS. HAGAN: Objection.

2 Q. -- or you are actually?

3 MS. HAGAN: Objection.

4 A. I don't know if she ever made that kind of
5 request.

6 Q. Okay. Did you ever suggest that, perhaps,
7 she make a request to switch to another line?

8 MS. HAGAN: Objection.

9 A. I don't recall suggesting that. I'm not sure
10 what line she would have switched to.

11 Q. For instance, you switched at one point to
12 the PAGNY line after being on the line at Bellevue when
13 you came over to CHS. Did you ever suggest to Dr. Kaye
14 that she, perhaps, be paid by PAGNY or switched to
15 another line?

16 MS. HAGAN: Objection. Dr. Winkler is not a
17 30(b)(6) witness. He's not in the position to
18 tell you whether or not -- or tell Dr. Kaye what
19 she should do administratively with her job
20 function.

21 MS. CANFIELD: That's correct. I'm just
22 asking if he did. That's a fair question.

23 MS. HAGAN: Objection.

24 A. I don't recall ever suggesting that to her,

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1 no.

2 Q. Okay. Did -- did you ever suggest to Dr.
3 Kaye that she take a managerial line?

4 MS. HAGAN: Objection. Again, Dr. Winkler is
5 not a 30(b)(6) witness.

6 MS. CANFIELD: That's not a proper objection.
7 I'm just asking if he did it.

8 MS. HAGAN: (Indiscernible) Dr. Kaye about
9 administrative or job opportunities and especially
10 since Dr. Kaye's had been there for 20 years. I
11 don't think he would be in a position to do that.

12 MS. HAGAN: He testified he was her friend.
13 So you can answer the question, Dr. Winkler.

14 A. I don't recall suggesting that she switch to
15 any type of a different line.

16 Q. Do you recall her suggesting to you that she
17 was offered a managerial position and had declined it?

18 MS. HAGAN: Objection. Again, that assumes
19 facts that were not in -- on the record.

20 MS. CANFIELD: You can answer.

21 MS. HAGAN: If there's a document, that would
22 be fair to show. Is there a document to this
23 effect, Ms. Canfield.

24 Q. You can answer the question.

1 MS. HAGAN: I'm asking if there's a document.

2 Is there a document, Ms. Canfield?

3 MS. CANFIELD: I don't have a document ready,
4 but Dr. Winkler, you can answer the question.

5 A. I don't recall if she ever mentioned that to
6 me.

7 Q. Okay. Now, you were also questioned earlier
8 today about the number of cases of -- 730 cases in the
9 Bronx versus the number of 730 in Brooklyn. Prior to
10 CHS, do you have a sense of which court clinic saw the
11 most cases? And I'm talking about 730.

12 MS. HAGAN: Objection. Asking him if he has
13 a workload and that he had an ability to compare
14 them to each other.

15 MS. CANFIELD: He can answer.

16 A. My sense is that Manhattan had the heaviest
17 workload.

18 Q. And give a sense as to which court clinic had
19 the lightest workload.

20 A. My sense is that it would have been Bronx or
21 Queens.

22 Q. And what do you base this on? Have you ever
23 seen figures, or have you been told?

24 A. I believe some numbers would be shared at

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1 certain meetings. There were reports, I recall, in the
2 Bronx that Ms. Persaud had to prepare. I think it was
3 monthly records of number of cases seen, and I seem to
4 recall seeing a report that had all the clinician
5 numbers on there.

6 Q. Now, the reports that Ms. Persaud prepared
7 during the time that you were working in the Bronx Court
8 Clinic, would you or Dr. Kaye review those reports to
9 ensure their accuracy?

10 A. I do recall reviewing some of those reports
11 to make sure they were accurate.

12 Q. Okay. Thank you.

13 Now, after CHS and after your promotion to
14 the director of the Brooklyn Court Clinic, were those
15 same reports generated by the administrative staff? I'm
16 speaking specifically for the Brooklyn Court Clinic. Do
17 you know?

18 A. What happened was we started to institute
19 this system called iSight that I mentioned. And to my
20 knowledge -- I think, perhaps, in the first few months
21 before iSight was formally up and running, they might
22 have continued to prepare the same reports. But then
23 once iSight became fully operational, I think now that
24 data is generated by iSight.

1 Q. Okay. And the data that's generated by
2 iSight since iSight's been up and running, do you review
3 those reports before they're submitted?

4 A. No, I don't.

5 Q. Okay. Do you know who does?

6 MS. HAGAN: Objection.

7 A. My assumption is that Ms. -- well, who would
8 submit that report in my clinic would be Ms. Stewart,
9 who is the coordinating manager. And my assumption is
10 that Ms. Stewart forwards those reports to Ms. Swenson,
11 our supervisor, but that's an assumption that Ms.
12 Swenson reviews them. I don't know that for a fact.

13 MS. CANFIELD: Okay. Thank you.

14 MS. HAGAN: I have a few follow-up questions.

15 MS. CANFIELD: I'm not finished yet.

16 MS. HAGAN: Okay. I didn't know. I'm sorry.

17 Q. Now, the word "remediation" has been used
18 today on several occasions. What is remediation to you
19 as you use it?

20 MS. HAGAN: Objection. Asked and answered.

21 MS. CANFIELD: You can answer.

22 A. To me, remediation is retraining, addressing
23 an issue that needs additional training.

24 Q. Do you see the distinction, actually, between

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1 continued training and retaining?

2 A. Yes, I do.

3 Q. Okay. And can I assume based on your
4 response that you see remediation as retraining and not
5 continued training; is that correct?

6 A. Yes, that's correct.

7 MS. HAGAN: Objection.

8 MS. CANFIELD: Okay. Thank you.

9 Q. Now, who told you that Dr. Brayton was in
10 remediation?

11 MS. HAGAN: Objection.

12 A. It might have been Dr. Jain, but I don't
13 recall for certain.

14 Q. Is it possible it was Dr. Kaye?

15 MS. HAGAN: Objection. Suggestive.

16 A. It could have been Dr. Kaye. I don't recall
17 who it was.

18 Q. Is it also possible it was Mr. Bloom?

19 MS. HAGAN: Objection. Asked and answered.
20 He said he didn't recall.

21 MS. CANFIELD: He can answer.

22 A. I don't recall Mr. Bloom saying that to me.

23 Q. Okay. You testified earlier about some
24 inconsistency in Dr. Brayton's report as noted by a

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1 judge. Who told you that there were complaints by a
2 judge regarding Dr. Brayton's reports as being
3 inconsistent?

4 MS. HAGAN: Objection. Leading. Compound
5 question.

6 A. Dr. Kaye told me that.

7 Q. And did you ever independently verify that?

8 MS. HAGAN: Objection.

9 A. I did not independently verify that, no.

10 Q. Did you ever speak to Dr. Brayton about that
11 claim?

12 A. No. I don't recall speaking to her about
13 this.

14 Q. You also testified that Dr. Brayton
15 complained to you that she felt that Dr. Kaye didn't
16 like how she conducted her interview; do you recall
17 that?

18 MS. HAGAN: Objection.

19 A. No.

20 Q. You don't recall that Dr. Brayton complained
21 that she felt that Dr. Kaye didn't like how she
22 conducted the interview?

23 A. I didn't say no. I said I didn't recall it.

24 Q. Okay. Do you recall if Dr. Brayton shared

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1 any specific comments or feedback that Dr. Kaye provided
2 her?

3 MS. HAGAN: Objection.

4 A. I don't recall specifics other than that
5 general comment about it.

6 Q. Okay. Do you recall her saying at any time
7 that there was a particular tone that, perhaps, was
8 dismissive from Dr. Kaye towards Dr. Brayton regarding
9 her work product?

10 MS. HAGAN: Objection. There's no foundation
11 for any of the questions.

12 MS. CANFIELD: You can answer.

13 A. I recall Dr. Brayton saying that -- something
14 to the effect that she didn't -- sometimes didn't feel
15 like she got an answer from Dr. Kaye if she had a
16 question about something.

17 Q. Okay. And was that just generally speaking
18 or on a particular matter that Dr. Brayton communicate
19 that to you?

20 MS. HAGAN: Objection.

21 A. As I recall, it was just a general -- general
22 comment, not a specific matter.

23 MS. CANFIELD: Okay. Thank you.

24 Q. Now, there was also some questions and some

1 testimony by you about the recording that Dr. Kaye made
2 when evaluating Jose Gonzalez. Would you agree, Dr.
3 Winkler, that there is a difference between making a
4 recording of an examination and making a recording of an
5 examination without consent?

6 MS. HAGAN: Objection. Form.

7 A. I'm not sure I understands what you mean.
8 Can you rephrase that.

9 Q. Sure. There were some questions to you about
10 whether or not you thought it was proper to record an
11 evaluation. And I want to know, is there a difference
12 between recording an evaluation when the individual is
13 aware of the recording? And I'm speaking of the subject
14 of the evaluation, or versus when there is a recording
15 and the subject of the evaluation is unaware that the
16 evaluation is being recorded?

17 MS. HAGAN: Objection as to form. If you can
18 understand the question.

19 A. I think if you -- in this type of an
20 evaluation, if you're telling someone they're being
21 recorded, I think it could potentially impact their
22 participation level.

23 Q. Okay. And would that be the case, regardless
24 of someone sitting for a competency -- competency

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1 evaluation?

2 MS. HAGAN: Objection. Hypothetical.

3 A. Do you mean any situation where someone's
4 told they're having a conversation that's being
5 recorded?

6 Q. A situation where anyone would learn after
7 the fact that their conversation was recorded without
8 their consent?

9 MS. HAGAN: Objection. What are we talking
10 about? Excuse me. During the course of a
11 forensic evaluation?

12 MS. CANFIELD: But it's true. But we're not
13 suggesting that inmates have lesser rights than
14 other people do, do we -- or are we.

15 MS. HAGAN: No, but the context would be
16 different.

17 MS. CANFIELD: I don't think Dr. Winkler has
18 answered my question.

19 MS. HAGAN: No, he hasn't, if he understands
20 it.

21 A. Could you please rephrase it? I'm sorry.

22 Q. Do you see a problem with recording in
23 evaluation without telling the subject of the evaluation
24 that's being recorded?

1 MS. HAGAN: Objection. Can you defined what
2 the problem is in this context? I don't
3 understand the question.

4 MS. CANFIELD: I'm not providing an answer.

5 MS. HAGAN: But I'm asking you to explain it.

6 MS. CANFIELD: You can object. You can
7 object, but that's sufficient.

8 MS. HAGAN: I don't understand the question.
9 I have a right to ask the same thing.

10 Q. Dr. Winkler, you can respond. Well, when you
11 say "a problem," are you speaking of it being illegal or
12 unethical -- or problem is a broad term.

13 Q. How about ethical?

14 A. It's not -- as far as I know, an ethical
15 provision to do it, as far as I'm aware.

16 Q. And is that based on recommendations from the
17 governing bodies of forensic evaluations, or is that
18 your personal opinion?

19 MS. HAGAN: Objection.

20 A. Governing -- governing -- I'm sorry --
21 ethical guidelines both for psychology and psychiatry.

22 Q. Okay. So are you aware -- so you share an
23 opinion that differs from official CHS policy?

24 MS. HAGAN: Objection. We are not even sure

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1 what the official CHS policy is and which -- when
2 it existed. Are you saying that the CHS policy
3 that took place after Dr. Kaye --

4 MS. CANFIELD: The current policy -- the
5 current policy.

6 MS. HAGAN: When was it for?

7 MS. CANFIELD: The current policy.

8 A. The current policy is that we are not allowed
9 to do it, and so I would not do it because it would
10 violate the policy.

11 Q. Okay. But if the policy was not in place,
12 you would -- you would have no ethical dilemma or feel
13 conflicted about recording evaluation without the
14 subject of the evaluation's consent?

15 MS. HAGAN: Objection. Form.

16 A. I have other reasons I wouldn't record. I
17 don't think recording, in general, is a good idea from
18 the extent that it might set a precedent that we want
19 all evaluations recorded. I'm not going to say I would
20 just do it. I would have to figure out, besides --
21 based on the case if I thought it would be appropriate
22 or required or not.

23 Q. There was some testimony earlier as well that
24 -- that Dr. Jain had destroyed his notes. How do you

1 know that Dr. Jain destroyed his notes?

2 MS. HAGAN: Objection. Form.

3 A. I believe Dr. Jain said that he did not keep
4 his notes. That he told us that he does not keep his
5 notes or did not then.

6 Q. And did he say he destroyed his notes, or he
7 does not keep his notes in the file?

8 MS. HAGAN: Objection. Leading. He said --
9 he already answered the question.

10 MS. CANFIELD: He can answer again.

11 A. I believe he said he destroys them.

12 Q. Okay. And -- and what context did he make
13 that comment to you?

14 MS. HAGAN: Objection.

15 A. If I recall correctly, there was a discussion
16 at one point about evaluators keeping notes. Some
17 evaluators don't keep their notes. And Dr. Jain, I
18 recall saying, that he was one of those evaluators that
19 did not keep his notes.

20 Q. Okay. And was this conversation, did it
21 occur before or after Dr. Kaye raised the issue
22 regarding Dr. Jain's destruction of his notes?

23 MS. HAGAN: Objection.

24 A. I don't recall.

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1 Q. Is it legal required that evaluators keep
2 their notes?

3 MS. HAGAN: Objection.

4 Q. If you know.

5 MS. HAGAN: Objection. Yeah.

6 A. As far as I know, no.

7 Q. Do you keep your notes?

8 A. Yes.

9 Q. You also testified to the fact that there
10 were students or fellows at the Bronx Court Clinic prior
11 to the transition to CHS. Do you recall that?

12 A. Yes.

13 Q. Okay. Were you aware that there were
14 specific complaints regarding Dr. Kaye from the fellows
15 at Albert Einstein?

16 MS. HAGAN: Objection. Form and foundation.

17 A. I was not aware of that.

18 Q. Okay. And there was also some -- there was
19 also some testimony from you about the psychological
20 testing survey that Dr. Jain sent out, and counsel
21 showed you a copy of your completed survey. Do you
22 recall that?

23 A. I do.

24 Q. Okay. And you had testified that there was

1 slightly more psychological testing in the Bronx as
2 compared to Brooklyn. Do you recall that?

3 A. I do recall that.

4 Q. Okay. And psychological testing, that's
5 performed by the psychologist, right, not -- not the
6 psychiatrist; is that true?

7 A. It is typically performed by psychologist.
8 Some psychiatrist received training on certain tests and
9 then administer them.

10 Q. Okay. Do you know if Dr. Kaye received that
11 training, so she is able to administer psychological
12 tests?

13 MS. HAGAN: Objection.

14 A. It's not like getting a training, and they
15 can administer all tests. You generally need to be
16 trained on each specific test. I don't recall if Dr.
17 Kaye had ever received any training on any psychological
18 tests.

19 Q. Do you recall during your time at the Bronx
20 Court Clinic that Dr. Kaye ever performed psychological
21 testing?

22 MS. HAGAN: Objection.

23 A. I don't recall her performing any
24 psychological testing, no.

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1 Q. Thank you. Now -- now, relatedly, there was
2 some testimony or questions about Dr. Garcia-Mansilla.
3 Do you recall that?

4 A. Yes.

5 Q. Now, she's -- she's a psychologist; correct?

6 A. Yes.

7 Q. Okay. Do you have personal knowledge of Dr.
8 Garcia-Mansilla sitting in on an evaluation?

9 MS. HAGAN: Objection.

10 A. I do not have personal knowledge of that.

11 Q. But you testified that you heard that she had
12 sat in on an evaluation; is that correct?

13 MS. HAGAN: Objection.

14 A. I believe I said that I heard that she wanted
15 to, or they were planning that she would.

16 Q. And who did you hear that from?

17 MS. HAGAN: Objection.

18 A. I -- I don't recall if I heard that from Dr.
19 Jain or Dr. Kaye or both. I honestly don't recall.

20 Q. There was also an exhibit, I believe it was
21 Exhibit Number 18 where Dr. MacDonald had requested the
22 records from some of the records that Dr. Kaye did not
23 complete. Do you recall that?

24 A. I think that didn't relate to redacted

1 records.

2 Q. Correct. Correct.

3 A. I remember that.

4 Q. Okay. Had you ever left an opinion
5 un-rendered when you were provided redacted records?

6 MS. HAGAN: Objection.

7 A. I believe we -- there were some cases with
8 the redacted records that led -- we did not form an
9 opinion because we could not. So eventually, we either
10 got un-redacted records, or the judge issued a force
11 order to bring a particular defendant in.

12 Q. Okay. In the circumstances, did you
13 eventually complete the evaluation?

14 A. I believe that my memory is that we did -- we
15 complete all the evaluations. There may have been a
16 case -- every once in a while, the judge will rescind a
17 730 order. So there may have been a case and a
18 situation where we can come to an opinion where the
19 judge rescinded the order.

20 Q. Okay. And are you thinking of both prior to
21 and after the CHS transition?

22 MS. HAGAN: Objection to form.

23 A. Yes. It's basically been the same process,
24 both before and after CHS.

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1 Q. Did you ever learn that Mr. Bloom and Ms.
2 McEvilley were ever unhappy with CHS taking over clinic?

3 MS. HAGAN: Objection. No foundation.

4 A. I think I did hear that they were unhappy
5 about that.

6 Q. And who did you hear that from?

7 MS. HAGAN: Objection.

8 A. I -- I believe I heard it from Dr. Kaye, and
9 I might have heard it -- I remember hearing it from
10 Mr. Bloom on occasion -- on an occasion when I was up in
11 the Bronx doing a case.

12 Q. Okay. And what, specifically, did Dr. Kaye
13 say to you about Mr. Bloom and Ms. McEvilley being
14 unhappy with the condition of oversight by CHS at the
15 clinic?

16 MS. HAGAN: Objection.

17 A. I don't really recall the specifics. I'm not
18 sure exactly -- I don't recall exactly why they were not
19 happy about it, or what they foresaw. I don't really
20 recall.

21 Q. Do you recall what Dr. Kaye reported to you
22 about their unhappiness?

23 A. It was just general information that Lorraine
24 and Jeff -- Ms. McEvilley and Mr. Bloom were not happy

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1 about it.

2 Q. And as part of that unhappiness, did they
3 also express their displeasure with Dr. Jain?

4 MS. HAGAN: Objection.

5 A. I seem to remember hearing that -- I think it
6 might have been Jeff who had similar comments about the
7 length of Dr. Jain's interviews or certain questions
8 that were asked.

9 Q. Did Dr. Kaye ever say that she was displeased
10 or unhappy with Dr. Jain?

11 A. I don't know if I would say displeased,
12 unhappy. I think we -- Dr. Kaye and I conduct our
13 interviews similarly. I had discussed with Dr. Jain
14 directly how I thought his interviews were considerably
15 long. And from what I recall, she had the same feeling
16 and opinion about his interviews.

17 Q. Anything else about how he conducted his
18 interviews that she was unhappy about?

19 MS. HAGAN: Objection.

20 A. Not that I recall.

21 Q. Same question regarding the Legal Aid
22 attorneys. Anything else besides the length and how he
23 conducted his interviews that they were unhappy about?
24

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1 MS. HAGAN: Objection.

2 A. Not that I recall.

3 MS. CANFIELD: Okay. Thank you.

4 Q. Did Dr. Kaye ever talk to you about retiring?

5 MS. HAGAN: Objection.

6 A. She did talk about it at some point. She had
7 mentioned she might retire when she reached a certain
8 age, I forget what that was. She had talked about it
9 generally.

10 Q. Did she mention retirement around the time
11 that you learned of the transition to CHS?

12 MS. HAGAN: Objection. Lack foundation.

13 A. I do remember her saying, I think she said
14 she might retire - I think she'll retire, she said in
15 August of that summer after CHS took over.

16 Q. Did Dr. Kaye ever share with you that the
17 change in her work schedule were having an adverse
18 effect on her children's ability in school?

19 MS. HAGAN: Objection. Lacks foundation and
20 was not even part of the questioning today.

21 Objection. It assumes that he has knowledge of
22 Dr. Kaye or her talking about her children.

23 A. I don't -- I don't recall if -- I don't
24 recall if it impacted when her children had to go to

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1 school, if that became a problem. I don't recall
2 whether she mentioned that or not.

3 MS. CANFIELD: All right. I have no further
4 questions at this point.

5 MS. HAGAN: I have a few.

6
7 FURTHER EXAMINATION

8 BY MS. HAGAN:

9 Q. Dr. Winkler, did you have any firsthand
10 knowledge of the workload of the other clinics after CHS
11 transitioned?

12 A. No. I don't recall seeing any direct numbers
13 for the clinics after the CHS transition.

14 Q. Now, you mentioned that Ms. Persaud made
15 other center managers generate reports prior to the
16 implementation of iSight; is that right?

17 A. Yes.

18 Q. And were you aware that the hard drive that
19 was the repository for documents for Ms. Persaud, that
20 it crashed?

21 A. I do recall hearing that there was a computer
22 problem with --

23 Q. Sorry. Do you recall that there was a
24 computer problem. Please continue. I'm sorry.

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1 A. I recall hearing that there was a problem
2 with Ms. Persaud's computer.

3 Q. Do you recall hearing that the reports -- the
4 retrieval (indiscernible) due to the problem on Ms.
5 Persaud's computer?

6 MS. CANFIELD: Objection. Lacks foundation.
7 You can answer.

8 A. I believe I recall hearing that some
9 information was lost.

10 Q. Now, was the -- were the other centers -- did
11 the other court clinics experience the same loss of
12 information as the Bronx Court Clinic?

13 MS. CANFIELD: Objection. Form. You can
14 answer. Again, no foundation.

15 A. We did not have that problem in Brooklyn. I
16 did not hear of a problem like that in Queens or
17 Manhattan.

18 Q. Were there any backup systems for the other
19 boroughs regarding the storage information?

20 MS. CANFIELD: Objection. You can answer.

21 A. I don't know if they have a backup system.

22 Q. Now, you said that the reports -- were there
23 reports that you came across accurate, as far as
24 detailing the amount of cases that came through the

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1 clinician?

2 A. The Bronx reports?

3 Q. Yes. Until the time you left.

4 A. There were times when I did check them. And
5 here and there, I would find an inaccuracy of a report
6 here or there, just a computation error, I think, by Ms.
7 Persaud. But I think in general, they were accurate.

8 Q. Now, Dr. Kaye's workload, specifically, was
9 it the same or the equivalent of the other directors,
10 Dr. Kaye's workload?

11 MS. CANFIELD: Objection to form. You can
12 answer.

13 A. Well, the director has a number of duties
14 besides seeing cases. So you're referring to the number
15 of cases or general duties compared to the other
16 directors.

17 Q. Well, let's stick -- let's stick with the
18 number of cases first for a moment. Would you say that
19 Dr. Kaye saw the same number of cases than the other
20 directors or the other clinician?

21 MS. CANFIELD: Objection. You can answer if
22 you're able.

23 A. I don't know for certain. My senses that
24 other clinics also maintained roughly a two doctor --

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1 two-case per doctor per day schedule, just what we had
2 in the Bronx.

3 Q. Were the other doctors actually -- were the
4 other clinic directors actually evaluating cases along
5 with the other clinicians in the clinics?

6 MS. CANFIELD: Objection to form. You can
7 answer.

8 A. As far as I know, yes, they were.

9 Q. Okay. Let's start with you. Did you
10 evaluate cases along with the other clinicians in the
11 court clinic?

12 A. Yes, I did.

13 Q. And you would say the same for Dr. Owen
14 during that time period?

15 A. As far as I know, she was seeing cases also,
16 yes.

17 Q. And Dr. Mundy as well?

18 A. Yes, as far as I know.

19 Q. Okay. And you would say that the average was
20 at least two a day; would that be accurate?

21 A. (Indiscernible) accurate, but when we talked
22 in general about caseloads at directors' meetings, and
23 my impression was that we were all seeing roughly the
24 same per doctor -- number of cases per doctor per day.

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1 Q. Now, was the work of the Bronx Court Clinic
2 impacted by the number of staff that was present at it?

3 MS. CANFIELD: Objection to form. When?

4 A. Yes. If you could tell me when you're
5 talking about.

6 Q. Okay. Let's start before CHS took over. Was
7 the Bronx Court Clinic adequately staffed before CHS
8 took over?

9 MS. CANFIELD: Objection. Asked and
10 answered. You can answer again.

11 A. Additional -- what I testified to was that
12 additional staff would allow more cases to be seen. But
13 my recollection is that we were seeing more cases and
14 did not have significant backlog.

15 Q. Did the Bronx clinic also see parole cases as
16 well?

17 A. Yes, we did.

18 Q. Now, did the other clinics see parole cases?

19 A. No, Bronx was the only parole that sees them
20 or used to see them -- used to be the only parole. I
21 don't know if it still has.

22 Q. How many -- on average, how many parole cases
23 would the Bronx Court Clinic see in a given month?

24 A. I think -- my recollection is it worked out

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1 to two or three a month extra parole.

2 Q. Now, I have questions about the clinicians
3 and -- when you hired the clinicians in general at the
4 Brooklyn Court Clinic, just I don't know Dr. Brayton,
5 did you have to give them training when they started?

6 A. Yes.

7 Q. Okay. And how long did that training take
8 place?

9 A. It depended on the experience level of the
10 clinician. It really was open-ended. There was no set
11 number or amount rather. It would be -- it would depend
12 on how much experience, as I said, how quickly they
13 seemed to grasp the work and prepare their reports
14 appropriately.

15 Q. Did Dr. Brayton require more training than
16 the other clinics that worked in the Brooklyn Court
17 Clinic that you hired?

18 A. Yes.

19 Q. Did any of the other clinicians at the
20 Brooklyn Court Clinic require remediation?

21 MS. CANFIELD: Objection to form. You can
22 answer.

23 A. No.

24 Q. Did any of the clinicians require additional

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1 training after the initial training that you provided?

2 A. No.

3 Q. Did you have problems with how the other
4 clinicians wrote their reports, I guess, in the same
5 fashion as Dr. Brayton?

6 A. No.

7 Q. Is consent required for a court-ordered
8 examination?

9 A. Well, the defendant can refuse to
10 participate, but then the case, in essence, goes on hold
11 until the evaluation is completed or in the rare
12 occasion where the judge withdraws the order.

13 MS. HAGAN: Let me modify that.

14 Q. Is consent to record required for a
15 court-ordered examination?

16 A. I don't believe so.

17 Q. Are you aware that New York is a one-party
18 reporting state?

19 A. I am aware of that.

20 Q. Now, were you treated differently after you
21 made comments on Dr. Jain's policies?

22 A. Treated differently by who?

23 Q. By Dr. Jain.

24 A. No, I don't think I was.

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1 Q. Were you treated differently by Dr. Ford?

2 A. No, I don't recall being treated differently.

3 Q. Were you treated any differently by Dr. Yang?

4 A. I've never had any actual contact with Dr.

5 Yang, other than that one meeting where she came.

6 Q. Did Dr. Jain -- Dr. Jain ever treat you any
7 differently when you voiced your, I guess, opinion as to
8 the length and the context of his report?

9 A. No, he didn't.

10 Q. Were you treated any differently after you
11 made comments about redacted records?

12 A. No, I don't recall being treated any
13 differently.

14 Q. Did anyone tell you you should not reach out
15 to the judges?

16 A. I don't recall being told not to reach out to
17 the judges, no.

18 Q. Did anyone express any concern or disdain
19 about your engagement of the defense bar?

20 A. What do you mean by "engagement of the
21 defense bar"?

22 Q. Like for example, it seemed like you and Dr.
23 Kaye had a pretty good rapport with Legal Aid; right?

24 A. That's correct.

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1 Q. And at times, you two have probably worked to
2 coordinate your schedules, so that, you know, in a
3 fashion that was conducive and convenient for everyone;
4 is that right?

5 A. Yes, that's correct.

6 Q. And at times, would you share, you know,
7 literature and information in order to get feedback from
8 defense bar?

9 MS. CANFIELD: Objection to form. You can
10 answer.

11 A. What -- what do you mean by literature and
12 information.

13 Q. Well, there were probably documents that were
14 circulated within the unit; right?

15 MS. CANFIELD: Objection. You can answer.

16 A. The only documents really we dealt with would
17 be the order from the court, complaint or indictment, if
18 we got a criminal history printout, and if we happen to
19 have records on a particular defendant. Sometimes
20 defense counsel would have records that they had gotten
21 already on a defendant, that we would obtain from them.

22 Q. And would you educate, at times, the defense
23 attorney's process, by any chance?

24 A. Yes. There were times where certain

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1 attorneys needed some education about particulars of the
2 730. I also recall Dr. Kaye and I doing a presentation
3 at one point. We did a presentation for new judges at
4 one point about 730s and the court clinic. And then we
5 did another presentation. It was part of a larger
6 effort by the courts. I think that was primarily for
7 defense counsel, new judges.

8 MS. HAGAN: Well, I think that's all I have.
9 Thank you, Dr. Winkler.

10 MS. CANFIELD: Yes, thank you. I have
11 nothing further. Sorry the day was so long.

12 THE REPORTER: Would you like a copy, Ms.
13 Canfield.

14 MS. CANFIELD: Yes.

15

16

17

18 (Time noted: 6:42 p.m.)

19

20

21

22

23

24

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1 STATE OF NEW YORK)
2) ss:
3 COUNTY OF)
4

5 I, BARRY WINKLER, M.D., hereby certify
6 that I have read the pages of the foregoing
7 testimony of this deposition and hereby
8 certify it to be a true and correct record.
9
10
11

12 _____
BARRY WINKLER, M.D.

13
14 Sworn to before me this
15 ____ day of ____, 2021.
16 _____

17 Notary Public
18
19
20
21
22
23
24

1	I N D E X	
2		
3	EXAMINATION BY	5
4	MS. HAGAN:	
5	EXAMINATION	277
6	BY MS. CANFIELD:	
7	FURTHER EXAMINATION	302
8	BY MS. HAGAN:	
9	Plaintiff's Exhibit 1, DOCUMENT BATES	126
10	STAMPED NYC_125 through NYC_127, was	
11	marked for identification.)	
12	(Plaintiff's Exhibit 2, DOCUMENT BATES	129
13	STAMPED NYC_291 to NYC_295, was marked for	
14	identification.)	
15	(Defendant's Exhibit 3, DOCUMENTS BATES	135
16	STAMPED NYC_320 to NYC_329, was marked for	
17	identification.)	
18	(Plaintiff's Exhibit 4, DOCUMENT BATES	148
19	STAMPED NYC_464 through 466 AND NYC-471	
20	through 477, was marked for	
21	identification.)	
22	(Plaintiff's Exhibit 5, DOCUMENT BATES	158
23	STAMPED NYC_837 through NYC_838, was	
24	marked for identification.)	

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1 (Plaintiff's Exhibit 6, DOCUMENT BATES 164
2 STAMPED NYC_840 THROUGH NYC_842, was
3 marked for identification.)

4 (Plaintiff's Exhibit 7, DOCUMENT BATES 170
5 STAMPED NYC_1188 to NYC_1190, was marked
6 for identification.)

7 (Plaintiff's Exhibit 8, DOCUMENT BATES 174
8 STAMPED NYC_1268 to NYC_1269, was marked
9 for identification.)

10 (Plaintiff's Exhibit 9, DOCUMENTS BATES 176
11 STAMPED NYC_3996 THROUGH NYC_3998,
12 NYC_3044 THROUGH NYC_3045, were marked for
13 identification.)

14 (Plaintiff's Exhibit 10, DOCUMENT BATES 180
15 STAMPED NYC-360 THROUGH NYC_363, was
16 marked for identification.)

17 (Plaintiff's Exhibit 11, DOCUMENT BATES 184
18 STAMPED NYC_1913, was marked for
19 identification.)

20 (Plaintiff's Exhibit 12, DOCUMENT BATES 188
21 STAMPED KAYE5THPROD012, was marked for
22 identification.)
23
24

1 (Plaintiff's Exhibit 14, DOCUMENT BATES 209
2 STAMPED KAYE5THPROD001 THROUGH
3 KAYE5THPROD002, was marked for
4 identification.)
5 (Plaintiff's Exhibit 15, DOCUMENT BATES 211
6 STAMPED NYC_80, was marked for
7 identification.)
8 (Plaintiff's Exhibit 17, DOCUMENT BATES 219
9 STAMPED NYC_1914 through NYC_1915, was
10 marked for identification.)
11 (Plaintiff's Exhibit 18, DOCUMENT BATES 223
12 STAMPED NYC-1924 through NYC-1925, was
13 marked for identification.)
14 (Plaintiff's Exhibit 19, DOCUMENTS BATES 225
15 STAMPED NYC_137 THROUGH NYC_138, was
16 marked for identification.)
17 (Plaintiff's Exhibit 20, DOCUMENT BATES 231
18 STAMPED NYC-1990 to NYC-1992, was marked
19 for identification.)
20 (Plaintiff's Exhibit 21, DOCUMENT BATES 239
21 STAMPED NYC_2739, was marked for
22 identification.)
23
24

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(Plaintiff's Exhibit 22, DOCUMENT BATES 244
STAMPED NYC_3036 and NYC_3037, was marked
for identification.)

(Plaintiff's Exhibit 23, DOCUMENT BATES 248
STAMPED NYC_2153, was marked for
identification.)

(Plaintiff's Exhibit 24, DOCUMENT BATES 254
STAMPED NYC_1310 and NYC_1311, was marked
for identification.)

(Plaintiff's Exhibit 25, DOCUMENT BATES 259
STAMPED NYC_1647, was marked for
identification.)

(Plaintiff's Exhibit 26, DOCUMENT BATES 262
STAMPED NYC_3111 and NYC_3112, was marked
for identification.)

(Plaintiff's Exhibit 27, DOCUMENT BATES 266
STAMPED NYC_3117 THROUGH NYC_3119, was
marked for identification.)

(EXHIBITS RETAINED BY MS. HAGAN)

C E R T I F I C A T I O N

STATE OF NEW YORK)
) ss :
COUNTY OF WESTCHESTER)

I, MARCI LOREN DUSTIN, Court Reporter and Notary Public within and for the County of Westchester, State of New York, do hereby certify:

That I reported the proceedings that are hereinbefore set forth, and that such transcript is a true and accurate record of said proceedings.

AND, I further certify that I am not related to any of the parties to this action by blood or marriage, and that I am in no way interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set my
hand.

Marcus Linn. Quarten

MARCI LOREN DUSTIN

Court Reporter



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ERRATA SHEET

Deposition of: BARRY WINKLER, M.D.

Re: MELISSA KAYE vs. HEALTH AND HOSPITALS CORPORATION, et al.

Date Taken: October 6, 2021

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(Signature)

Sworn to before me this

__ day of __, 2021.

Notary Public

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